

DEVELOPING A LEGISLATIVE SOLUTION TO THE INDIAN TRUST FUND LAWSUIT

OVERSIGHT FIELD HEARING

BEFORE THE

COMMITTEE ON RESOURCES
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED EIGHTH CONGRESS

FIRST SESSION

Monday, November 3, 2003, in Mesa, Arizona

Serial No. 108-77

Printed for the use of the Committee on Resources



Available via the World Wide Web: <http://www.access.gpo.gov/congress/house>
or
Committee address: <http://resourcescommittee.house.gov>

U.S. GOVERNMENT PRINTING OFFICE

90-265 PS

WASHINGTON : 2004

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512-1800; DC area (202) 512-1800
Fax: (202) 512-2250 Mail: Stop SSOP, Washington, DC 20402-0001

COMMITTEE ON RESOURCES

RICHARD W. POMBO, California, *Chairman*
NICK J. RAHALL II, West Virginia, *Ranking Democrat Member*

Don Young, Alaska	Dale E. Kildee, Michigan
W.J. "Billy" Tauzin, Louisiana	Eni F.H. Faleomavaega, American Samoa
Jim Saxton, New Jersey	Neil Abercrombie, Hawaii
Elton Gallegly, California	Solomon P. Ortiz, Texas
John J. Duncan, Jr., Tennessee	Frank Pallone, Jr., New Jersey
Wayne T. Gilchrest, Maryland	Calvin M. Dooley, California
Ken Calvert, California	Donna M. Christensen, Virgin Islands
Scott McInnis, Colorado	Ron Kind, Wisconsin
Barbara Cubin, Wyoming	Jay Inslee, Washington
George Radanovich, California	Grace F. Napolitano, California
Walter B. Jones, Jr., North Carolina	Tom Udall, New Mexico
Chris Cannon, Utah	Mark Udall, Colorado
John E. Peterson, Pennsylvania	Anibal Acevedo-Vilá, Puerto Rico
Jim Gibbons, Nevada,	Brad Carson, Oklahoma
<i>Vice Chairman</i>	Raúl M. Grijalva, Arizona
Mark E. Souder, Indiana	Dennis A. Cardoza, California
Greg Walden, Oregon	Madeleine Z. Bordallo, Guam
Thomas G. Tancredo, Colorado	George Miller, California
J.D. Hayworth, Arizona	Edward J. Markey, Massachusetts
Tom Osborne, Nebraska	Rubén Hinojosa, Texas
Jeff Flake, Arizona	Ciro D. Rodriguez, Texas
Dennis R. Rehberg, Montana	Joe Baca, California
Rick Renzi, Arizona	Betty McCollum, Minnesota
Tom Cole, Oklahoma	
Stevan Pearce, New Mexico	
Rob Bishop, Utah	
Devin Nunes, California	
Randy Neugebauer, Texas	

Steven J. Ding, *Chief of Staff*
Lisa Pittman, *Chief Counsel*
James H. Zoia, *Democrat Staff Director*
Jeffrey P. Petrich, *Democrat Chief Counsel*

C O N T E N T S

	Page
Hearing held on Monday, November 3, 2003	1
Statement of Members:	
Flake, Hon. Jeff, a Representative in Congress from the State of Arizona .	5
Grijalva, Hon. Raul M., a Representative in Congress from the State of Arizona	4
Hayworth, Hon. J.D., a Representative in Congress from the State of Arizona	2
Prepared statement of	3
Renzi, Hon. Rick, a Representative in Congress from the State of Arizona	5
Statement of Witnesses:	
Berrey, John, Intertribal Monitoring Association of Indian Trust Funds, Albuquerque, New Mexico	11
Prepared statement of	14
Chavez, Ervin, Shii Shi Keyah Association, Bloomfield, New Mexico	18
Prepared statement of	20
Garcia, Calvert, President, Nageezi Chapter, Navajo Nation	16
Prepared statement of	17
Ramos, Joni, President, Salt River Pima-Maricopa Indian Community, Scottsdale, Arizona	6
Prepared statement of	9
Additional materials supplied:	
McDowell, Nora, Chairwoman, Fort Mojave Tribal Council of Arizona, Statement submitted for the record	40

OVERSIGHT HEARING ON “DEVELOPING A LEGISLATIVE SOLUTION TO THE INDIAN TRUST FUND LAWSUIT”

**Monday, November 3, 2003
U.S. House of Representatives
Committee on Resources
Mesa, Arizona**

The Committee met, pursuant to call, at 1:00 p.m., at the Salt River Pima-Maricopa Indian Community Lehi Community Center, Mesa, Arizona, Hon. J.D. Hayworth [Acting Chairman of the Committee] presiding.

Present: Representatives Hayworth, Flake, Renzi, Faleomavaega, and Grijalva.

Mr. HAYWORTH. This special field hearing of the Committee on Resources will come to order.

The Committee is meeting today to hear testimony on developing a legislative solution to the Indian Trust Fund lawsuit.

A couple of notes important to make here at the outset. First of all, we want to thank our Friends of the St. River Maricopa Indian community for taking the time to put together on rather short notice, and to allow us to utilize these beautiful facilities.

Madam President, we appreciate the new Lehi Community Center. We are also appreciative of the number of young people who have joined us here today as we bring Congress to the people. On so many occasions many of you have traveled to Washington, D.C. We joke about that being hardship duty, and it is somewhat of a difficulty to come from the southwestern United States back to Washington. But we appreciate that very much.

And, indeed, in keeping with the unique nature of today's hearing and in gratitude to our hosts here, the Salt River Pima-Maricopa Indian community, I am going to recognize Ricardo Leonard, who is a Council member here at Salt River, to offer the invocation.

If you would all stand and then follow the invocation and join me in the Pledge of Allegiance to the Flag.

Now, Ricardo, if you would offer the prayer.

Mr. LEONARD. I want to welcome everybody, first of all, to Salt River. And thank you very much for coming. Our community appreciates this and I think it is a very good beginning of good relationship.

[Piman invocation]

Mr. LEONARD. Creator, come to be here today. I ask for strength to go through all these papers and we will speak amongst each other. Have us speak in a good way, speak with our hearts so that we may be coming to conclusions and work together.

I ask you to bless all the people's families that they are away from at this time.

I ask that you bless the ones that are traveling at this time. Bring them here safely. And as they leave this building, watch over them.

Thank you, Creator, for this beautiful day. For the beautiful rain that you gave us, the cooling weather.

I ask that you watch over this community. Help us to continue on as two people, two tribes, one strength, one voice.

Before the little ones, all the elders, give them strength, one as they start their lives, others as they are in their twilight years. Help them continue on.

Thank you for all that you have given us: the plants, the animals, all the land. Thank you for all this.

Thank you for everything that has been handed down to us from our elders.

Creator, I thank you again for opening up this alley of communication here and having these Congressmen come down here, and all these tribal leaders so that we may speak with good hearts, with good minds to talk about the things that concern us.

Mr. HAYWORTH. Thank you very much.

Now, if you could stand again and please join in the Pledge of Allegiance to Our Flag.

[Pledge of Allegiance.]

STATEMENT OF THE HON. J.D. HAYWORTH, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ARIZONA

Mr. HAYWORTH. Thank you. You may be seated.

Ladies and gentlemen, again we welcome all of you to this field hearing as we bring Congress to the people. And, again, especially a word of gratitude to our hosts the Salt River Pima-Maricopa Indian community in this beautiful new community center.

The purpose of today's hearing is to receive the views of tribal leaders and individual money account holders regarding the development of legislation by the U.S. Congress to settle matters relating to the Indian Trust Fund lawsuit.

As we said, we are so honored to be here, the Salt River Pima-Maricopa Indian community.

And as we have noted also, so often in past years Congress has held hearings in Washington, D.C., and while the hearings are of great value to get on the congressional record the perspective of so many different people, they sometimes fail to capture the thoughts and views of Americans living outside our nation's capital or, certainly, a broad array of you because of the difficulty of timing and travel and schedules.

I know that regardless of political party or affiliation, those who join me in this field hearing have come to understand during their time in Washington that not all knowledge and wisdom emanates from Washington, D.C. And to serve the people, it is important to come be among the people.

Chairman Richard Pombo, of our Resources Committee, has as his desire the goal of holding hearings over the days ahead in Indian Country to make sure the perspectives of the first Americans are not forgotten, but absolutely included. And he, and the rest of our Committee, though they are unable to be here today certainly appreciate this opportunity to get together.

This hearing is about trying to write legislation to bring about fair, just and equitable closure to the hundreds of thousands of individual Indians who are victims of more than 100 years of mismanagement of their trust account records by the Federal Government.

No one can argue that if it were not for the class action suit that Eloise Cobell filed almost 8 years ago, the Government would never have been forced to confront this problem. However, the costs of the litigation continue. No one knows exactly what individual Indians will receive satisfaction for the injustices they have suffered.

Few can even agree with a complete historical accounting will be achieved in our lifetime, if ever. Meanwhile, hundreds of thousands of individual Indians do not know if or when they will receive any money they might be owed. Many of these are elders, as we heard in the invocation from Ricardo, those in the twilight of life should not have to wait any longer.

We on the Resources Committee are working on a bipartisan basis and are determined to identify a way to write a bill that brings closure to this terrible episode in American history. We want to hear from today's witnesses what such legislation should contain.

Now, I am pleased to be joined right now by an all Arizona panel. We look forward to our friend from American Samoa Eni Faleomavaega joining us shortly. But we are so pleased to have our good friend from southern Arizona who served so capably on the Resources Committee, who serves as the Ranking Member of the Minority in lieu of Mr. Faleomavaega being here, our good friend Raul Grijalva.

Statement of The Honorable J.D. Hayworth, a Representative in Congress from the State of Arizona

The purpose of today's hearing is to receive the views of tribal leaders and individual Indian money account holders regarding the development of legislation by the U.S. Congress to settle matters relating to the Indian Trust Fund lawsuit.

I want to thank the Salt River Pima-Maricopa Indian Community for providing the facilities and hosting us today. So often in past years, Congress has held its hearings in Washington, D.C. While these hearings are valuable to Members of Congress, they sometimes fail to capture the thoughts and views of Americans living outside the nation's capital.

Chairman Pombo wants to hold hearings over the coming years in Indian Country. I know he and the rest of the Committee appreciate the opportunity to hold one here.

This hearing is about trying to write legislation to bring about fair, just, and equitable closure to the hundreds of thousands of individual Indians who are victims of more than 100 years of mismanagement of their trust account records by the federal government.

No one can argue that if it weren't for the class action suit that Eloise Cobell filed almost 8 years ago, the government would never have been forced to confront this problem.

However, the costs of the litigation continue. No one knows exactly when individual Indians will receive satisfaction for the injustices they have suffered. Few can

even agree whether a complete historical accounting will be achieved in our lifetime, if ever.

Meanwhile, hundreds of thousands of individual Indians don't know if, or when, they will receive any money they might be owed. Many of them are elders and should not have to wait any longer.

We on the Resources Committee working on a bipartisan basis are determined to identify a way to write a bill that brings closure to this terrible episode in American history. We want to hear from today's witnesses what such legislation should contain.

Mr. HAYWORTH. Mr. Grijalva?

STATEMENT OF THE HON. RAUL GRIJALVA, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ARIZONA

Mr. GRIJALVA. Thank you very much.

And I want to associate myself with the comments that my good friend Mr. Hayworth just made.

Being new to Congress, as a freshman, this issue merits a bipartisan solution and a legislative solution that involves a process toward settlement and a process that creates a fair level playing field for tribes and tribal members.

We need a bipartisan solution, because quite frankly if we look at the history of this issue, it has been bipartisan lack of action, bipartisan lack of attention at the administrative level, regardless of who the President has been or has not been, that brings us to this point.

The trust funds for Indian tribes and for individual members is an ongoing conflict that begs for resolution, settlement and today to discuss a process by which we begin to craft the bipartisan legislation to lead toward that settlement.

A cornerstone of that process needs to be fairness. A cornerstone of that process needs to be disclosure. A cornerstone of that process needs to be that we hear from the people most directly affected, and that we do not promote resolutions that have not been confirmed, have not been consented to or at least received advice on from affected members and tribal leaders in this country.

The recent rider in Appropriations is a good example. I opposed that rider and it forced many of us to vote against the whole appropriations because instead of seeking solution toward settlement, it undercuts the effort that we are trying to make here today to reach a bipartisan solution.

And so I am glad to be here. I want to thank my colleagues from Arizona, and in particular my good friend Congressman Hayworth, Renzi and Flake for their leadership on this issue in promoting a bipartisan solution, and more importantly, in involving those persons and those members, those individuals and those tribes most directly affected by the lack of action in Congress and by the lack of action in the administrative level.

So I am glad to be here. And I appreciate very much the opportunity to be part of this hearing. Thank you, sir.

Mr. HAYWORTH. Thank you very much.

And now it is my honor to turn to my right, both literally and figuratively, the gentleman who represents what used to be part of the old Sixth Congressional District, now the new First Congressional District where at one point in this political subdivision, one

out of four in constituents was Native American. The gentleman from First District, Congressman Renzi.

STATEMENT OF THE HON. RICHARD RENZI, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ARIZONA

Mr. RENZI. Thank you, Chairman.

I am grateful. Members of the Committee. I am thankful to be here today and to learn, especially from our panel of experts as well as to hear from those in the audience, hopefully, when we have time after this hearing.

I also want to thank Raul for his comments. We think we are right on point.

We just went through a tough, tough vote last week and Congressman Hayworth led the charge on it. But just to show you how tough it was, those of us who voted against it were voting against \$59 million for Navajo healthcare. \$2.5 billion for wild land fire fighting. And the conference report also included \$400 million in emergency fire fighting to repay 2003 borrowed funds.

Congressman Hayworth and Congressman Flake know that it put us in a position where we were having to vote between the needs and desires to serve our first Americans, as Congressman Hayworth talked about, our Native American population and firemen, as well as healthcare money. Almost \$60 million for healthcare upon Navajo. We had to vote against that to get the point where we could have this hearing today that Congressman Hayworth was so adamant about, of having in the field and chairing in order to get this process back on track.

And so I want to thank Congressman Hayworth, Chairman Pombo for allowing this to take place, allowing this hearing to be the first step in letting both parties, Republicans and Democrat, who were involved in making that rider on the Appropriations such a tough vote last week, sending a signal to them that we need to get back on track toward this settlement process.

Thank you, Mr. Chairman.

Mr. HAYWORTH. Thank you, Mr. Renzi.

And now we turn to the gentleman who represents the newly constituted Sixth District. In the realignment, we changed a few things around in the East Valley. But a gentleman who has been steadfast in his stewardship of the Resources Committee, the gentleman from the Sixth District of Arizona, Jeff Flake.

Mr. Flake?

STATEMENT OF THE HON. JEFF FLAKE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ARIZONA

Mr. FLAKE. Thank you, Congressman Hayworth, Congressman Grijalva and Congressman Renzi. I am glad to be here.

I want to have this chance to listen to the witnesses.

Those who saw what unfolded last week in Congress saw the uglier side of politics. How a rider can be slipped in without due process, without hearings being held and without due deliberation. Hopefully what you witness today is the better side of politics and the better side of Congress.

We are coming to hear concerns and to get input into the drafting of legislation.

I am glad to be here and look forward to the testimony.
Thanks.

Mr. HAYWORTH. Thank you, Congressman Flake.

As using the prerogative of the Chair, I would endorse and second the comments of my colleagues on both sides of aisle.

Let this hearing bring out the best in Congress by listening directly to the people and coming to the people in stark contrast to the behavior we saw last week as some staffers on the Appropriations Committee working with some in the Administration sought essentially to short circuit our legislative process. And that is something that we all decry, and something that we will fight against, and it was evidenced by the no votes on the Interior Conference Report.

Our witnesses who join us today include our hostess, the President of the Salt River Pima-Maricopa Indian community, I want to make sure I get that right because on some designation, sometimes some of the words are left out. But I am going to get it absolutely right. The Salt River Pima-Maricopa Indian community, our friend President Joni Ramos is here.

Her testimony will be followed by John Berrey, from the Intertribal Monitoring Association of Indian Trust Funds out of Albuquerque, New Mexico.

Calvert Garcia, who is the President of the Nageezi Chapter of the Navajo Nation. Calvert, we are glad you are here.

And Ervin Chavez, the Shii Shi Keyah Association of Bloomfield, New Mexico.

We welcome all our witnesses.

Witnesses, if you would stand with me. It has been our custom to administer the oath prior to testimony. And I would ask you to stand and raise your right hand.

[Witnesses sworn.]

Mr. HAYWORTH. Let the record show that all witnesses answered in the affirmative.

And, again, we welcome you here for your comments.

A couple of notes on this. While this will be, perhaps, a little less structured than what transpires in Washington, your entire statements will be submitted for the record.

And to facilitate dialog, we like to try to limit comments, these opening comments to about 5 minutes. And correspondingly, as we go through questions, each member will have 5 minutes to respond to questions.

Now, do not worry. There is no some sort of little charged electric button to give you a jolt if the statement exceeds 5 minutes. But our purpose here is to get your statements on the record, and then to really get into some questions that we believe will help move us toward a legislative solution.

So with that, we turn our hostess, President Ramos. Thank you very much for coming. Your entire statement is included in the record without objection, and we welcome you for your testimony this afternoon.

**STATEMENT OF JONI RAMOS, PRESIDENT,
SALT RIVER PIMA-MARICOPA INDIAN COMMUNITY**

Ms. RAMOS. Thank you.

Please excuse me. I am a little bit sick here.

Congressman J.D. Hayworth, Congressman Rick Renzi, members of the Committee and distinguished guests, welcome to the Salt River Pima-Maricopa Indian Community. We at the Salt River Pima-Maricopa Indian Community are pleased to host your House Resources field hearing here at the Lehi Community Building. The community of Lehi is within the boundary of the Salt River Indian Community and its members play an active and vibrant role in setting the course of the future of our government.

First, I want to take a moment to acknowledge Congressman Hayworth for your personal effort in attempting to pull a legislative rider from the Interior Appropriation's bill that extends the time that the Department of Interior must begin the process of a historical accounting of trust fund records. Thank you very much for that.

While the efforts of both yourself and the Native American Caucus fell short, tribal communities, including Salt River, are grateful to have a strong voice in Congress. As a tribal leader, I know that your willingness to support this country's Native American nations is, sometimes, at personal political risk.

Last week's vote brings to light significance of Indian trust reform and the potential for adverse impact on the overall trust relationship regardless of each tribes' personal perspective on the Cobell v. Norton court proceedings. Apart from the number of IIM accounts that a tribe or an individual tribal members may have, all tribes are significantly affected by the Cobell litigation because it is driving trust reform and the Bureau of Indian Affairs reorganization and re-engineering efforts.

Our perspective on developing a legislative solution to the Indian trust fund lawsuit is that any proposed settlement must include the participation of both parties in a structured mediated negotiated process. Also, keep in mind that any negotiated settlement must be conducted in good faith and not have an adverse impact on tribal governments.

Our point of view on a legislative solution to the trust fund lawsuit is in line with the October 17th letter that was sent from Honorable J.D. Hayworth and Honorable Dale Kildee, Co-Chairs of the Native American Caucus, to Chairman Taylor and Ranking Member Norm Dicks of the House Appropriations Committee.

The letter specifically states: "We believe both sides are willing to sit down to negotiate a fair and expedited settlement. With the conclusion of the recent trial, many unresolved issues have now been cleared by the court order. For instance, it is now clear what the nature and scope of the IIM Trust accounting is. This makes a negotiated settlement between the parties more timely and easier."

In achieving an equitable settlement, the parties must adhere to certain basic principles that will protect the overall integrity of such negotiations and ensure proper resolve for both the plaintiffs and true trust reform. These following principles are consistent with those voiced by other tribal leaders in Indian Country regarding any proposed settlement.

And the basic principles for the settlement are:

(1): Do you reopen issues that have already been settled. Rather, use the previously settled issues to narrow the scope of negotiations. This will be both equitable and efficient and it would not override any preceding court decisions;

(2): Issues already settled by the court should determine the legal parameters and act as a foundation for any settlement negotiations. For example, the court has ordered full accountability by the Department of Interior with relation to its trust obligations;

(3): Any negotiated settlement process should be consistent with the Cobell litigation and should distinguish accounting issues from trust reform issues.

For example, the accounting issues involved in the lawsuit pertain to demonstrating what happened in the past, while trust reform issues deal not only with accounting for trust assets in the future but, more importantly, with properly carrying out the Federal Government's fiduciary duties;

(4): There should be full disclosure of material documents and facts in any negotiated settlement process.

For example, the Government must have the burden of producing all records from all government agencies and contractors pertaining to trust fund claims;

(5): There should be no preset cap for settlement prior to negotiations. A preset cap would be diametrically opposed to good faith negotiations. More importantly, a preset cap would be tantamount to a violation of the "takings clause" of the Fifth Amendment of the United States Constitution. The Supreme Court made it clear in *Babbitt v. Youpee* that trust assets, no matter how small, cannot be without just compensation;

(6): Finally, any settlement claims must be recovered from the Judgment Fund codified at 31 USC §1304. Currently, Interior appropriations intended for Indian programs is being diverted to bear the burden of litigation costs. This is not consistent with congressional intent in the appropriation of these funds. Use of the Judgment Funds for settlement would ensure that Interior appropriations would be used for their intended purposes, which is to provide much needed resources to underfunded Indian programs.

The Department of Interior's trust reform and reorganization effort has gone far beyond the scope and intent of the Cobell litigation and the court's decisions in that case. Creating additional layers of government and the shifting of organizational boxes and trust duties is not the answer to true trust reform. Nor does a forces or a capped settlement provide equitable relief to Native peoples who have suffered from injustices far too long. The efforts of this Committee and its members to seek a fair and just solution to this long-standing issue are commendable.

By interacting and communicating at these field hearings held in Indian Country, we are reaffirming and ensuring our government-to-government relationship in a mutually respectful manner. Thank you for the opportunity to speak.

In closing, we thank you for coming to our home and affording us this opportunity to share with you our recommendations for any mediated settlement to the Cobell litigation. Please extend our appreciation to Chairman Pombo for his work as Chairman of the House Resources Committee.

And also I would like to recognize Councilman Ricardo Leonard and Councilman Tony Collins, Mr. Vice President Leonard Rivers and several of our students from our Desert Eagle High School.

Thank you very much.

[The prepared statement of Ms. Ramos follows:]

**Statement of Joni M. Ramos, President,
Salt River Pima-Maricopa Indian Community**

Congressman J.D. Hayworth, Congressman Rick Renzi, members of the Committee, and distinguished guests, welcome to the Salt River Pima-Maricopa Indian Community. We at the Salt River Pima-Maricopa Indian Community are pleased to host your House Resources field hearing here at the Lehi Community Building. The community of Lehi is within the boundary of the Salt River Indian Community and its members play an active and vibrant role in setting the course of the future for our government.

First, I want to take a moment to acknowledge Congressman Hayworth for your personal effort in attempting to pull a legislative rider from the Interior Appropriation's bill that extends the time that the Department of Interior must begin the process of historical accounting of trust fund records.

While the efforts of both yourself and the Native American Caucus fell short, tribal communities, including Salt River, are grateful to have a strong voice in Congress. As a tribal leader, I know that your willingness to support this country's Native American nations is, sometimes, at personal political risk.

Last week's vote brings to light the significance of Indian trust reform and the potential for adverse impact on the overall trust relationship regardless of each tribes' personal perspective on the Cobell v. Norton court proceedings. Apart from the number of IIM accounts that a tribe or individual tribal members may have, all tribes are significantly affected by the Cobell litigation because it is driving trust reform and the Bureau of Indian Affairs (BIA) reorganization and reengineering efforts.

Our perspective on developing a legislative solution to the Indian trust fund lawsuit is that any proposed settlement must include the participation of both parties in a structured, mediated, negotiated process. Also, keep in mind that any negotiated settlement must be conducted in good faith and not have an adverse impact on tribal governments.

Our point of view on a legislative solution to the trust fund lawsuit is in line with the October 17th letter that was sent from Honorable J.D. Hayworth and Honorable Dale Kildee, Co-Chairs of the Native American Caucus to Chairman Taylor and Ranking Member Norm Dicks of the House Appropriations Committee. The letter specifically states:

Quote, "We believe both sides are willing to sit down to negotiate a fair and expedited settlement. With the conclusion of the recent trial, many unresolved issues have now been cleared up by the court order. For instance, it is now clear what the nature and scope of the IIM Trust accounting is. This makes a negotiated settlement between the parties more timely and easier." End quote.

In achieving an equitable settlement, the parties must adhere to certain basic principles that will protect the overall integrity of such negotiations and ensure proper resolve for both the plaintiffs and true trust reform. These following principles are consistent with those voiced by other tribal leaders in Indian Country regarding any proposed settlement solution.

BASIC PRINCIPLES FOR SETTLEMENT

1. Do not reopen issues that have already been settled. Rather, use the previously settled issues to narrow the scope of negotiations. This would be both equitable and efficient, and it would not override any preceding court decisions.
2. Issues already settled by the court should determine the legal parameters and act as a foundation for any settlement negotiations. For example, the court has ordered full accountability by the Department of Interior with relation to its trust obligations.
3. Any negotiated settlement process should be consistent with the Cobell litigation and should distinguish accounting issues from trust reform issues. For example, the accounting issues involved in the lawsuit pertain to demonstrating what happened in the past, while trust reform issues deal not only with accounting for trust assets in the future but, more importantly, with properly carrying out the federal government's fiduciary duties.

4. There should be full disclosure of material documents and facts in any negotiated settlement process. For example, the government must have the burden of producing all records from all government agencies and contractors pertaining to the trust fund claims.
5. There should be no preset cap for settlement prior to negotiations. A preset cap would be diametrically opposed to good faith negotiations. More importantly, a preset cap would be tantamount to a violation of the "takings clause" of the Fifth Amendment of the United States Constitution. The Supreme Court made it clear in *Babbitt v. Youpee* that trust assets—no matter how small—cannot be taken without just compensation.
6. Finally, any settlement claims must be recovered from the Judgment Fund codified at 31 U.S.C. § 1304. Currently, Interior appropriations intended for Indian programs is being diverted to bear the burden of litigation costs. This is not consistent with congressional intent in the appropriation of these funds. Use of the Judgment Funds for settlement would ensure that Interior appropriations would be used for their intended purposes which is to provide much-needed resources to underfunded Indian programs.

The Department of Interior's trust reform and reorganization effort has gone far beyond the scope and intent of the Cobell litigation and the court's decisions in that case. Creating additional layers of government and the shifting of organizational boxes and trust duties is not the answer to true trust reform. Nor does a forced or a capped settlement provide equitable relief to Native peoples who have suffered from injustices for far too long. The efforts of this Committee and its members to seek a fair and just solution to this long-standing issue are commendable.

By interacting and communicating at these field hearings held in Indian Country, we are reaffirming and ensuring our government-to-government relationship in a mutually respectful manner. Thank you for the opportunity to speak.

In closing, we thank you for coming to our home and affording us this opportunity to share with you our recommendations for any mediated settlement to the Cobell litigation. Please extend our appreciation to Chairman Pombo for his work as Chairman of the House Resources Committee.

Mr. HAYWORTH. Madam President, we thank you.

To the Council members and, again, to the young people, the high school, who are here along with interested observers, we welcome you. And thank you for the chance to be here among friends at your home.

And I would be remiss as the Chair if I did not note the addition, rather dramatic entrance, of our Ranking Democratic Member. Now, we talk about the southwest, and geographically you are so far southwest, Eni, you are almost east of where the globe is. The Delegate from Samoa, our good friend, Eni Faleomavaega.

Mr. Faleomavaega, thank you for being here today.

Mr. FALEOMAVEGA. Well, Mr. Chairman, I apologize for being a little late. My canoe had a hole in it and there was such a tremendous storm on my way up north.

But I do want to if I may just to offer my commendation, and thank you, Mr. Chairman, for your initiative, your leadership not only as a Co-Chairman of our Native American Indian Congressional Caucus, but for the years that I have had the privilege of working with you in dealing with Native American issues.

I think the people of the good State of Arizona are to be proud of the fact that through your leadership and interest, and sensitivity to the needs of our Native American communities throughout the United States, is to be commended.

I also note my good friend Mr. Flake and Mr. Renzi are also here with us, and my hermano here, Mr. Grijalva.

I am just happy to be here, and thank you for doing this. We need this. This is such an important issue for our Native American people. I think there has been 100 years of neglect, pure negligence

if you will, Mr. Chairman. The fact that 2 point some billion dollars are in question in terms of the trust responsibility that was supposed to be vested in the Federal Government, specifically the Department of Interior. Some 500,000 individual Native American accounts and some 1,300 tribal accounts are not accounted for; the list goes on and on, Mr. Chairman. I sincerely hope that through these series of hearings that our Committee will be holding, and I also commend Senator Campbell for the initiative that he has taken that, hopefully, we will find some kind of a solution to the situation that we find ourselves in.

I certainly want to offer my personal welcome to the leaders of our Indian community here in the region.

I just want to say please take care of my people. There are a couple of Samoans that live here in the State of Arizona. They tend to play football, Mr. Chairman. I do not know. Our first love is rugby, but now we seem to enjoy football because they pay more money.

But I do want to offer my warm welcome to the members of our Native American community who are here in attendance.

I sincerely hope that the substance that we will be putting into at this hearing, Mr. Chairman, will be such that our Chairman, Mr. Pombo, and Mr. Rahall and all of us, as members of the Committee, will truly find a solution to this very serious problem.

And with that, Mr. Chairman, again I thank you for having this hearing here in Arizona.

Mr. HAYWORTH. And we thank the gentleman from Samoa for his statement.

We will continue the testimony now. We are pleased to call on John Berrey, who is representing the Intertribal Monitoring Association of Indian Trust Funds.

Mr. Berrey?

STATEMENT OF JOHN BERREY, INTERTRIBAL MONITORING ASSOCIATION OF INDIAN TRUST FUNDS

Mr. BERREY. Well, thank you very much.

I am also the Chairman of the Quapaw Tribe in Oklahoma.

And I just want to say thanks to all of you for having these field hearings. On behalf of ITMA, we are very pleased that we are able to be part of it.

ITMA is very concerned about the attempts, the three or four attempts over time that the Committee that we do not believe has jurisdiction over Indian affairs has tried to bring some end to this lawsuit. And we just appreciate you all taking control over it, and we want to work with you in anyway we can as this goes forward.

We also want to thank some of the people who have long time been supporters of American Indians and who stood up for our rights last week. In particular, I would like to thank Congressman Pombo, Congressman Tom Cole from Oklahoma, my Representative Brad Carson from Oklahoma's Second District, Congressman Rahall, Congressman Kildee, Congressman Hayworth and Congressman Renzi. We appreciate you all standing up. We know it meant a lot for you and what you said meant a lot, especially in light of what you were voting against.

We also want to thank the Salt River Pima-Maricopa Indian Community. I do not know if people understand this, but the Salt River Tribe is recognized throughout Indian Country as a real leader in self-governance and progressive tribal management. And my tribe, for instance, the Quapaw Tribe, looks to them for guidance in how to get from where we are at to where they are at today. And we are constantly watching them and trying to learn from what they do. And we appreciate them hosting this meeting.

ITMA was established for the specific purposing of monitoring DOI's reform efforts in the management of the Indian trust. The member tribes of ITMA have significant trust lands and many of the tribes that are part of ITMA, including the ones from Rocky Mountain and Great Plains, those two regions alone, hold 68 percent of the tribal trust lands and over 100,000 IIM accounts. ITMA member tribes, therefore, have a great interest in reform efforts and will protect the Indian trust; both for tribal governments and IIM accountholders.

The recent focus on ITMA efforts in the arena of trust reform has been to protect tribal sovereign governmental rights. Specifically, ITMA has been concerned that the trust reforms do not limit tribal government authority over tribal trust assets which comprise 89 percent of the total trust.

We have been actively involved in the last 5 years working with a Solicitor's Office in Interior trying to develop some methods to solve some of the tribal litigation that is out there. There is some 30 pieces of litigation, the tribes that are similar to the Cobell lawsuit, and we have been actively working with the Solicitor's Office to try to come up with a plan for that.

At ITMA we credit the Cobell lawsuit for focusing the national attention on the Department of Interior's serious historical mismanagement, however ITMA believes that the time has arrived to consider options to resolve this watershed litigation. We believe that this contentious and costly litigation no longer serves the best interests of individual Indian money accountholders and the continuation of this suit will result in greater negative impact on DOI's ability to deliver trust services to tribes and individual beneficiaries.

We believe that the current organization efforts of the DOI is a response to Cobell litigation and we believe it is premature until the completion of the "To Be" Trust reengineering effort is done and they follow what that model guides them to as opposed to reorganization before reengineering.

With that, there is a few things that we think are critical in part of the settlement process for ITMA:

(1): Is the authorizing committees of Congress must remain engaged in the development of settlement processes to ensure that the parties maintain a commitment to the settlement process;

(2): We believe that a resolution of the Cobell litigation must not impact the Interior budget in a manner that will deprive tribes of critical governmental operations funding and diminishing the services for individual beneficiaries.

I had a talk with Mr. Carson last week before the vote. And they were mentioning things like cannibalization of the Indian programs. And that kind of discussion really scares us. It makes us

very nervous because, as you know, there are a lot of tribes out there that are not big gaming tribes that rely on the help that they get from the Department of Interior. And those threats of the cannibalization creates a lot of fear within us for our people;

(3): We also believe that it must be a voluntary process that allows individuals that decide to stay in litigation to have that opportunity;

(4): And we also, the Salt River spoke, we believe that the Judgment Fund should be opened up for settlement.

We believe that the process of settlement for IIM trust fund related to claims must be developed with tribal input; both from tribal governments and from accountholders. As a long-standing watchdog of DOI trust management, ITMA should also be involved in the development of settlement processes. As with any negotiated settlement of legal claims, the scope and specific details of a settlement process need to be developed by all parties who will be affected. Tribes participating in the development of a settlement mechanism must do so in a decisionmaking and meaningful manner.

You know, as the Chairman of the Quapaw Tribe, I am voted, I was elected to represent the individual money accountholders within the Quapaw Tribe. And we believe the tribal leadership, because of their positions as elected representatives, should be part of the discussion.

And before I close, I would like to take my hat off as ITMA representative and just talk to you a minute about as the Chairman of the Quapaw Tribe.

The Quapaw Tribe is one of the 30 tribes that have these very complex litigations in court. And we have gone through a process of settlement. We have come to a verbal agreement with the Department of Justice and the Department of Interior in the form of settlement for our own accounting. And the way we got there was through a conflict assessment.

The National Congress of American Indians are supporting the idea of a conflict assessment. I have spoken to the Administration of the Department of Interior about it. And we recommend that you would talk to the U.S. Institute on Environmental Conflict Resolution here in Tucson. They are funded through the House Resources Committee. They are an offshoot of the Udall Foundation.

A conflict assessment is not the settlement process; it is a way to bring reality to the rhetoric. You know, this lawsuit is like a big bowl of spaghetti, and it is a way to straighten out those noodles and for people to understand more clearly who should be at the table, what the issues are and how they should be addressed.

And if you look at a settlement process over a time line, if you start first with a conflict assessment, the length of the settlement process is shortened quite a bit because it sets the table at the beginning and gives everyone a more clear opportunity to understand what the issues are.

And what typically happens after the conflict assessment, a neutral party comes in, interviews all of the stakeholders and makes a report. And that report gives you options of how the settlement process should continue. And if you have multiple claims, they might decide this claim should stay in court, this claim should be

a part of a three judge panel or binding arbitration, or this could be mediated. But it gives you the opportunity to breakdown all of these myriad of issues and look at them with a clear head and a clear vision on how you go forward.

And with NCAI and with a lot of tribal leaders, I think, we would really like you to consider working through a conflict assessment before you delve into a settlement process.

I appreciate your time. Thank you.

[The prepared statement of Mr. Berrey follows:]

Statement of John Berrey, Chairman, Quapaw Tribe, Oklahoma, representing the Intertribal Monitoring Association on Indian Trust Funds

Honorable members of the House Committee on Resources, I am John Berrey, Chairman of the Quapaw Tribe of Oklahoma and I am honored to be here today to present testimony on behalf of the Inter-Tribal Monitoring Association on Indian Trust Funds (ITMA). The members of ITMA commend this Committee for conducting these field hearings on such a critical issue to Indian Tribes and their members. ITMA has been concerned that several attempts that have been made to address settlement of the Cobell lawsuit in the wrong Congressional Committees and we completely support the process being managed in this Committee, the authorizing Committee, with jurisdiction and authority regarding the affairs of Native Americans.

Further, I would like to express on behalf of ITMA and myself our sincere appreciation to those members of the Committee who have long supported Native Americans and who most recently stood up and fought for the rights of the individual Indians. We thank, in particular, our most recent champions, Congressman Pombo, Congressman Tom Cole, my representative Congressman Brad Carson from Oklahoma's 2nd Congressional District, Congressman Rahall, Congressman Kildee and Congressman J.D. Hayworth from this great State of Arizona. I would also like to thank our host tribe, the Salt River Pima-Maricopa Indian Community, a tribe recognized throughout Indian Country as a leader in terms of self-governance and progressive tribal management.

ITMA was established for the specific purpose of monitoring DOI's reform efforts in the management of the Indian trust. The member tribes of ITMA are holders of significant trust assets and govern tribes that include many IIM account holders. For example, most tribes from the Rocky Mountain and Great Plains Regions are members of ITMA and these two regions together hold 68% of tribal trust lands and have over 100,000 IIM account holders. ITMA member Tribes, therefore, have a great interest in reform efforts that will protect the Indian trust; both for Tribal governments and IIM account holders.

The recent focus of ITMA efforts in the arena of trust reform has been to protect tribal sovereign governmental rights. Specifically, ITMA has been concerned that trust reform efforts do not limit Tribal government authority over tribal trust assets which comprise 89% of the total trust currently overseen by the DOI. Additionally, ITMA has been actively involved for the last five years in the discussion and development of a settlement process for Tribal claims against the United States for trust mismanagement.

ITMA credits the Cobell lawsuit for focusing national attention on the Department of Interior's serious historical mismanagement of the American Indian trust. However, ITMA believes that the time has arrived to consider options to resolve this watershed litigation. Contentious and costly litigation no longer serves the best interests of all IIM account holders and the continuation of this suit will likely result in a greater negative impact on DOI's ability to deliver needed trust services to Tribes and individuals beneficiaries.

The current reorganization efforts of DOI appear to be directly responsive to the Cobell litigation and are premature until the completion of the "To Be" Trust re-engineering effort that is creating the model for the future improved delivery of Trust services to Tribes and their members. Further, ITMA is concerned that the litigation may outlive many IIM account holders who are waiting for financial relief from the mismanagement of their accounts.

Therefore, ITMA supports the development of settlement options consistent with the following:

1. The authorizing committees of Congress must remain engaged in the development of a settlement process to ensure that the parties maintain a commitment to settlement options. ITMA member Tribes are concerned that the re-

cent action to stay the requirements of Judge Lambreth's September 25, 2003, Order in the Cobell litigation, provided it passes the Senate, will deter active efforts to work toward settlement.

2. A resolution of the Cobell litigation must not impact the Interior budget in a manner that will deprive Tribes of critical governmental operations funding and diminish the services for individual beneficiaries. ITMA believes that Tribes should not have to suffer for the Department of Interior's historical mismanagement of the Indian trust.
3. Utilization of a settlement process must be completely voluntary for the individual Indian. IIM account holders must have the right to choose to utilize a settlement process or to remain part of the ongoing litigation. The current legal remedies available to IIM account holders must not be affected by settlement legislation.
4. Funds to settle with IIM account holders should come from the Judgment Fund as provided by 13 U.S.C. 1304 and should not impact funding for critical services to Tribes.

ITMA believes that a process for the settlement of IIM trust fund-related claims must be developed with tribal input; both from tribal governments and from account holders. As a long-standing watchdog of DOI trust management, ITMA should also be involved in the development of a settlement process. As with any negotiated settlement of legal claims, the scope and specific details of a settlement process need to be developed by all the parties who will be affected. Tribes participating in the development of a settlement mechanism must do so in a decisionmaking and meaningful manner. ITMA stands ready to assist in a meaningful capacity in the critical efforts.

Before closing I would like to remove my hat as the representative of ITMA and speak as the Chairman of the Quapaw Tribe and ask you to embrace the time created by the very inappropriate legislative rider and begin a settlement process. There is tremendous support in Indian Country to begin a settlement process with a "conflict assessment." A "conflict assessment" can be done in a very short time and provide all stakeholders and affected parties a more clear description of the underlying issues as well as options to address the plethora of claims and replacing rhetoric with reality. I ask that you and your staff begin with a discussion with the U.S. Institute for Environmental Conflict Resolution in Tucson; The Institute has the experts and the ability to provide consultation regarding the process and the Institute gets its funding through your Committee. I have asked the Institute to provide Chairman Pombo and Vice Chairman Rahall with a letter describing how they can help creating a settlement process that can work.

Thank you.

The Intertribal Monitoring Association on Indian Trust Funds (ITMA) is a representative organization of the following 59 federally recognized tribes: Central Council of Tlingit & Haida Indian Tribes, Kenaitze Indian Tribe, Metlakatla Indian Tribe, Hopi Nation, Tohono O'odham Nation, Salt River Pima-Maricopa Indian Community, Fort Bidwell Indian Community, Ewiiapaayp Band of Kumeyaay Indians, Hoopa Valley Tribe, Yurok Tribe, Soboba Band of Luiseno Indians, Southern Ute Tribe, Coeur D'Alene Tribe, Nez Perce Tribe, Passamaquoddy-Pleasant Point Tribe, Penobscot Nation, Lac Vieux Desert Band of Lake Superior Chippewa, Sault Ste. Marie Tribe of Chippewa Indians, Grand Portage Tribe, Leech Lake Band of Ojibwe, Red Lake Band of Chippewa Indians, Blackfeet Tribe, Chippewa Cree Tribe of Rocky Boy, Confederated Salish & Kootenai Tribe, Crow Tribe, Fort Belknap Tribes, Fort Peck Tribes, Northern Cheyenne Tribe, Winnebago Tribe, Fallon Paiute-Shoshone Tribes, Walker River Paiute Tribal Council, Jicarilla Apache Nation, Mescalero Apache Tribe, Pueblo of Cochiti, Pueblo of Laguna, Pueblo of Sandia, Three Affiliated Tribes of Fort Berthold, Turtle Mountain Band of Chippewa, Absentee Shawnee Tribe, Alabama Quassarte Tribe, Cherokee Nation, Kaw Nation, Kiowa Tribe of Oklahoma, Iowa Tribe, Muscogee Creek Nation, Osage Tribe, Quapaw Tribe, Thlopthlocco Tribal Town, Confederated Tribes of Umatilla, Confederate Tribes of Warm Springs, Cheyenne River Sioux Tribe, Sisseton-Wahpeton Sioux Tribe, Chehalis Tribe, Confederated Tribes of Colville, Quinault Indian Nation, Forest County Potawatomi Tribe, Oneida Tribe of Wisconsin, Eastern Shoshone Tribe, and the Northern Arapaho Tribe.

Mr. HAYWORTH. And, John, we thank you for your testimony.

Now we turn to Calvert Garcia, who is President of the Navajo and Nageezi Chapter of the Sovereign Navajo Nation.

President Garcia, welcome and we appreciate your testimony, sir.

**STATEMENT OF CALVERT GARCIA, PRESIDENT,
NAGEEZI CHAPTER, NAVAJO NATION**

Mr. GARCIA. Thank you, Congressman Hayworth, Congressman Flake, Congressman Renzi who represents the majority of the Navajo Nation in the northeast Arizona. So welcome. And the other two gentlemen with the Resource Committee.

Representing as the elected official up in the northeast quarter of Navajo Nation, and I am an elected official. I also represent Navajo. President Shirley has given a task to represent Navajo Nation down here. So I appreciate being here.

Like I said, my name is Calvert Garcia. And I represent the Navajo people on the northeast edge of Navajo Nation. I am also an Indian allottee and am very concerned about the legislation being proposed.

Thank you for the invitation and opportunity to provide my views to the Committee.

Most of the Navajo Indian allottees are in the northeast section of the Navajo Nation. Currently there are 5,200 Navajo allottees who have individual Indian Monies Account and receive monthly royalty payment off their Indian Allotment Land. Most of the IIM accountholders receive monthly royalty payments from oil and gas production off their Indian allotment land from the Bureau of Indian Affairs.

When Judge Royce Lamberth disconnected the Internet service in December of 2001, it had a devastating impact on our accountholders, leaving with no financial resource. The majority of the IIM accountholders are elderly and rely totally on their monthly royalty payment to meet their basic needs. Immediately upon the disruption of IIM payments, my neighboring community leaders coordinated an effort with myself to request financial assistance from the Navajo Nation Council and Navajo Nation President for temporary relief. The Navajo Nation President and Council appropriated \$535,000 to assist IIM accountholders for the northeast section of accountholders.

Many of the individual Indian accountholders are aware that the Bureau of Indian Affairs and the U.S. Government have mismanaged their trust funds for many years. The allottees in the Huerfano and Nageezi communities agree that it is important for Congress to explore options in resolving the Cobell Trust Fund litigation. Although resolution is needed, we cannot adapt a quick fix solution without understanding why it has taken the government over 100 years to address their gross mismanagement. The Navajo allottees are demanding that government account for the millions of acres of land and account to proper beneficiaries, which will also identify the funds it received and invested from these leases. Since the inception of the Cobell lawsuit, the courts have found the government breached its trust responsibilities to the allottees, since the creation of Indian Trust Fund in 1887. As accountholders, we know the Federal Government has abused our trust funds and provided injustices to many of our tribal and individual Indian Monies accountholders and beneficiaries.

Most recently, your colleagues in the Senate have introduced Senate Bill 1770, which is called "Indian Money Account Claim Satisfaction Act of 2003." The establishment of the foundation is

foremost important in settling this case. This will establish that Indian Money Account Claim Satisfaction, which would study the records, develop an accounting method and determine the payment of accountholders. The following method will be a way to address the history determination of payments and nonpayments, and enable accountholders to accept the method and dismiss themselves from the Cobell lawsuit.

If the accountholders do not agree with the IMACS, then the allottees and accountholders would continue to participate with the Cobell lawsuit. It is important to many accountholders that settling the Cobell lawsuit should include damages for past mismanagement and implementing reforms to protect our trust assets for the future.

The Navajo allottees also have serious concerns over the current Department of Interior's Reorganization efforts. They have created many wrongdoings and mishandling billions of Indian Trust dollars. Another option is to allow Navajo allottees to utilize the Indian Self Determination by contracting and administering funds directly to accountholders. The contracting of self-determination would ensure the allottees' ability to effectively manage without being obstructed by the Interior Department.

Proper historical accounting over the last 115 years and past damages would be a crucial part of any proposed settlement. The Cobell v. Interior Department lawsuit can be settled, but the United States first must participate in settlement talks with honesty and integrity, although the legislation being proposed will not please everyone.

Also of importance is to establish a trust account within the Treasury that would be available to the trust beneficiaries. We recommend that the funds allocated to the trust account not come from the program account of the Department of the Interior. Remember, the government's misdeeds should not impede on appropriated Indian program funds.

And I thank you.

[The prepared statement of Mr. Garcia follows:]

**Statement of Calvert Garcia, President & Allottee,
Nageezi (N.M.) Navajo Indians**

Greetings Chairman Pombo, Ranking Minority Member Rahall, and Members of the Resources Committee. Welcome to Mesa, Arizona. My name is Calvert Garcia and I serve as a Chapter President in Nageezi, New Mexico, which is located on the Eastern Edge of the Great Navajo Nation. I am also an Indian Allottee and am very concerned about the legislation being proposed. Thank you for the invitation and opportunity to provide my views to your Committee.

Most of the Navajo Indian Allottees are in the North East section of the Navajo Nation. Currently there are 5,200 Navajo Allottees who have Individual Indian Monies (IIM) Accounts and receive royalty payments off their Indian Allotment Land. Most of the IIM Account holders receive monthly royalty payments from oil and gas production off their Indian Allotment land from the Bureau of Indian Affairs.

When Judge Royce Lamberth disconnected the Internet service in December of 2001, it had a devastating impact on our account holders, leaving them with no financial resources. The majority of the IIM account holders is elderly and relies totally on their royalty payments. Immediately upon the disruption of IIM payments, my neighboring community leaders coordinated an emergency financial assistance from the Navajo Nation Council and Navajo Nation President for temporary relief. The Navajo Nation President and Council appropriated \$535,000.00 to assist IIM Account holders.

Many of the Individual Indian Account (IIM) holders are aware that the Bureau of Indian Affairs (BIA) and the United States Government have mismanaged their trust funds. The- Allottees in the Huerfano and Nageezi communities agree that it is important for Congress to explore options in resolving the Cobell Trust Fund litigation. Although resolution is needed, we cannot adapt a "quick fix" solution without understanding why it has taken the government over 100 years to address their gross mismanagement. The Navajo Allottees are demanding the government to account for the millions of acres of land and account to proper beneficiaries, which will also identify the funds it received and invested from leases. Since the inception of the Cobell Lawsuit, the courts have found the government breached its trust responsibilities to the Allottees, since the creation of "Individual Indian Trust in 1887." As account holders, we know the federal government has abused our trust funds and provided injustices to many of our tribal and Individual Indian Monies (IIM) account holders and beneficiaries.

Most recently, your colleagues in the Senate have introduced Senate Bill 1770, which is called, "Indian Money Account Claim Satisfaction Act of 2003." The establishment of the foundation is foremost important. This will establish the Indian Money Account Claim Satisfaction (IMACS), which would study the records, develop an accounting method, and determine the payment of account holders. The following method would be a way to address the history determination of payments and non-payments, and enable account holders to accept the method and dismiss themselves from the Cobell Lawsuit.

If the account holders do not agree with the IMACS, then the allottee account holders would continue to participate with the Cobell Lawsuit. It is also important to many account holders that settling the Cobell Lawsuit should include damages for past mismanagement and implementing reforms to protect our trust assets for the future. The Navajo Allottees also have serious concerns on the current Department of Interior's Reorganization effort, which has created many wrongdoings and the mishandling billions of Indian Trust dollars. Another option is to allow Navajo Allottees to utilize the Indian Self Determination by contracting and administering funds directly to account holders. The contracting of Self Determination would ensure the Allottees' ability to effectively manage without being obstructed by the Interior Department.

Proper Historical Accounting over the last one hundred fifteen (115) years and past damages would be a crucial part of any proposed settlement. The Cobell v. Department lawsuit can be settled, but the United States Government first must participate in settlement talks with honesty and integrity, although the legislation being proposed will not please everyone. Also of importance is to establish a Trust Account within the Treasury that would be available to the trust beneficiaries. We recommend that the Funds allocated to the Trust Account not come from the program account of the Department of the Interior. Remember the government's misdeeds should not impede on appropriated Indian program funds.

Again, I thank the Committee for its work on this issue and would welcome the opportunity to any questions that you might have.

Mr. HAYWORTH. We thank you, President Garcia.

Now we turn to Ervin Chavez from the Shii Shi Keyah Association in Bloomfield, New Mexico.

Mr. Chavez?

STATEMENT OF ERVIN CHAVEZ, SHII SHI KEYAH ASSOCIATION

Mr. CHAVEZ. Thank you, Congressman Hayworth.

Mr. Chairman, members of the Committee and invited guests. My name is Ervin Chavez from Bloomfield, New Mexico. My telephone number is 505-320-0153.

I appear before you not only as an individual Navajo allottee, part of the class in the case of Cobell v. Norton, but also the President of the Shii Shi Keyah Association of Navajo allottees.

This Navajo word translates into English meaning "This land, my land."

Our association has been working with an amount, some 35,000 Navajo allottees in the four corner regions of New Mexico, Arizona and Utah, for the past 19 years.

I will be summarizing my 8 page written comments as instructed by the Committee.

Let me start by saying in the strongest words possible I urge you soundly to reject S. 1770. It is unconscionable fraud on Indian allottees as well as those well-intentioned Senators who were duped into sponsoring it.

My written report goes into detail why I make this comment.

I also want to say that Shii Shi Keyah Association fully supports the difficult and important work that is being done by Eloise Cobell and her attorneys representing her, and us, and Honorable Joyce Lamberth. Again, we strongly oppose S. 1770. We feel that this will exacerbate rather than expedite resolution to the underlying claims and issues.

Mr. Chairman, I want to make highlights of two issues out of my written statement.

First, equal treatment by Congress. The wholesale failure of the United States as a trustee for Indian property and money is a national disgrace. The continued failure of the United States to live up to its commitments and account for Indian monies and property, even after Congress has mandated it. The current handling of the IIM mess and the manner in which the government is handling the Cobell case is nothing less than a national disgrace.

Due process and equal access to the courts of this nation is not something that was historically provided to Indians and Indian tribes. S. 1770 goes squarely back to that unsavory past. On that basis alone it should be abandoned.

Second, general accepted accounting principles and auditing standards. Why should there be a reduced standard of performance to account. If the standard being proposed is not adequate for rich white people in this country, then why should it be adequate for Indians who happen to be poor but for what little money they have, all the more, is important for their substance.

Members of this Committee, you must answer this question: Why the different treatment of Indian monies and trust property? If the proposed different standard is not acceptable for your children, your grandmother, then why should it be acceptable for us.

Nothing less than general accepted principles of accounting and standards of audit are acceptable. All trust assets the use of or disposition of which should result in trust fund must be accurately and completely accounted for. S. 1770 does not do that. Therefore, it is unacceptable.

In conclusion, we recommend the following:

The irrefutable point here is that the amount in an IIM account has nothing in common with how much should have been deposited, and therefore it follows that the trustee must include in his accurate and complete accounting all sums which have been properly paid under the lease. S. 1770 does not do this;

(2): S. 1770 predicates the information flow to come from the Secretary. Members of this Committee cannot countenance that. For the reasons just mentioned, Interior has been engaged in fraudulent deception of Congress for decades. The same people at the upper managerial level of the Interior are going to provide this fraudulent data again. You cannot allow this;

(3): The time periods in S. 1770 are woefully inadequate to do anything meaningful to develop and present a proper information to support the claims;

(4): All experts on the so-called task force must receive instruction in the meaning of trust responsibility from the Indian perspective of enforcement and not from the government's perspective of evasion;

And last, Senate bill 1770 provides no representative participation as a matter of rights for Indian accountholders whose rights are to be affected. Does anyone doubt the outcome? The amounts provided are grossly inadequate given what needs to be done for an honest accounting. The participants are the perpetrators. Committee members, on behalf of all allottees, I ask that this bill be soundly rejected. No amount of tweaking can alter the conclusion.

Thank you.

I have the written comments for submittal.

And I want to say this after saying that, I do not want Congressmen sitting before me to take any of my comments personally. Because we have for the past 20 years been dealing with the Department of Interior and the BIA. And again, they are coming out and they are coming at us, as the way a Navajo would put it, with different sheep skin. The same sheep coming at us again with a different sheep skin. And it is very frustrating.

For the record, I am sure that you probably already have the position from the Navajo Nation Intercouncil Committee, but on October 22nd, just a few weeks ago, this Committee passed resolutions supporting the Shii Shi Keyah Association's opposing 1770. And it is right here.

[The prepared statement of Mr. Chavez follows:]

Statement of Ervin Chavez, President, Shii Shi Keyah Association

INTRODUCTION

Mr. Chairman, members of the Committee, staff, and invited guests, my name is Ervin Chavez, P.O. Box 2404, Bloomfield, New Mexico, 87413, telephone number 505.320.0153. I appear before you not only as an individual Navajo Allottee, part of the class represented in the case of Cobell v. Norton., now pending in the United States District Court for the District of Columbia and in the United States Court of Appeals for the D.C. Circuit, but also as the President of the Shii Shi Keyah Association of Navajo Allottees ("SSKA"). In the strongest words possible I urge you to soundly reject S. 1770. It is an unconscionable fraud on Indian Allottees and on those well-intentioned Senators who were duped into sponsoring it.

I will explain further our unique interest and perspective on these matters in some detail, but first permit me to make one thing very clear: We support fully the difficult and important work that is being done on our behalf by Eloise Cobell and the attorneys representing her, and us, before the Honorable Royce Lamberth..

Further, I have read the substance of their views expressed on S. 1770 and I am also in support of the positions articulated. Notwithstanding the best of intentions that may have motivated this bill, S. 1770, it is ill-conceived and will exacerbate rather than expedite resolution of the underlying claims and issues.

SHII SHI KEYAH ASSOCIATION HISTORY

The SSKA was formed by very, very poor Navajo Allottees in 1984 as an unincorporated association of Navajo Allottees who had oil and gas leases on their allotments. It has been continuously involved in the issues of the proper performance by the United States as trustee for the land, resources and money from those resources ever since. I have been President of the SSKA continuously since 1986.

Shii Shi Keyah is a transliteration of a phrase in the Navajo language which means, "this land, our land." The phrases connotes how dearly and reverentially the Navajo People, the Dine, view their land. Our lands are located in an area that is commonly referred to as the Four Corners Region, comprised of Northwest New

Mexico, Northeast Arizona, and Southeastern Utah. There are approximately 35,000 Navajo Allottees with varying degrees of interest in the allotments in this area. I am a typical Navajo Allottee in the sense of how I came into ownership of my allotted interest but I am not typical in the sense of my education and work experience. However, it is that very education and work experience that permits me to bring to you the problems faced by the vast, vast number of my people who are not educated, who don't speak or read the English language, and who are amongst the very poorest people in this country ... many entire families subsisting on the \$80 to \$100 a month that they may receive through their IIM accounts from their oil and gas royalties.

Unlike so many SSKA members, I was blessed with parents who, despite having ten children, managed to provide us with an education. I am very proud of their accomplishments in providing us children with the education they never had. We lost my mother to cancer in 1996. My father, thankfully, is still with us. He is 96 years old.

I have an Associate of Arts Degree in Business Administration and Public Administration. And, in addition to being President of the SSKA for the past seventeen years, I have also served my community in other capacities. I have served as an elected official within the Navajo Nation from 1977 to 1996 as the Huerfano Chapter Secretary, Vice President and President. I have also served in the elected position of New Mexico county government as a San Juan County Commissioner for several terms into the present.

My understanding of many of the important issues facing Indian Allottees who derive their income from oil and gas production on their lands comes from first-hand knowledge. From 1974-94 I worked for the El Paso Natural Gas Company, the largest domestic producer of natural gas during that period. I suffered severe burns from a natural gas explosion that occurred while on the job for El Paso as a result of the failure of some to follow proper procedures. I know first hand of the need for the activities of those who lease Indian lands to be under proper supervision ... including all of those things that go into proper computation and payment of royalties that are due and that when deposited into the IIM accounts become the so-called IIM Trust Account Balances.

EQUAL TREATMENT BY CONGRESS

I would like to call the Committee's attention to some matters perhaps not covered by others but that are a prime example of the extraordinary inadequacy of S. 1770 that relate to the proper accounting for the "upstream of the first deposit" issues, that is, the proper and complete accounting for the trust property that is disposed of to produce trust funds deposited into our HM accounts. But before doing that I wish to first call to the Committee's attention the disparate Congressional treatment being afforded our trust assets and IIM money compared to that afforded to other citizens when their money is at risk or in jeopardy or lost.

During the Savings and Loan scandal of the 1980's the United States was acting in the position of a guarantor through its federally created corporations that insured deposits in the country's Savings & Loan Companies. Even though some had deposits that exceeded the insured limit the Congress of the United States made sure that not one depositor lost money ... all were made whole. Please keep in mind that the S&L failures were not the result of action or failure to act of any federal institution or agency. The failures, frauds, etc., were perpetrated by private individuals and their corporate shields. But the United States stepped in as a guarantor and made all depositors whole. Why? Because faith in the banking system (including the S&Ls) of the United States was, and is, important.

Similarly, this past Thursday, October 30, 2003, a front-page article in The Wall Street Journal disclosed a Fannie Mae accounting error to the tune of \$1.1 billion. Although this is a government-chartered company it is so big that many investors fear that there will be a negative impact on the entire country's housing market and industry. "[T]he episode instantly reinforced fears that Fannie Mae and its smaller sibling Freddie Mac lack the necessary skills to operate their massive and complex businesses, which some investors, rivals and political critics worry could pose risk to the nation's financial system if not properly managed. Though the companies are not formally backed by a government guarantee, investors generally assume the government would step in to bail the companies out in an emergency, given their critical importance to the housing and broader financial markets."

And, no doubt, the speculation that the government would bail investors out would occur if the worst were to come to pass. Why? Because there is a national interest at stake. And like the S&L debacle, it will not matter if the amounts are in the billions of dollars. As many on this Committee will no doubt recall, the initial amount, right out of the box, that Congress saw fit to appropriate in the S&L mess

was \$88 billion. Just a few hundreds of millions more than the recently requested tab for Iraq. Why? Again the answer lies in the perception of National Interest.

The wholesale failure of the United States as a trustee for Indian property and money is a National Disgrace. It is a failure of the United States to live up to its commitments not just to the Indians whose money and property are either lost, stolen, or otherwise unaccounted for, but it is a failure of the government to do what Congress after Congress has mandated it to do. National Integrity must account for something. The current handling of the EM mess and the manner in which the government is handling the Cobell case is nothing less than a National Disgrace.

Do any in this room really think that those orchestrating this debacle at the Department of Interior should be rewarded for continued acts of deception and fraud? There are those bankers on Wall Street now that have joined their co-conspirators in the perp walks and criminal trials for their fraudulent practices at Enron, Tyco, etc.

Those at Interior who have been responsible for similar criminally fraudulent practices regarding Indian money, EM accounts, and our trust resources should be similarly prosecuted. Instead we have before us S. 1770. What do we make of this? Let us examine S. 1770 in a little detail.

S. 1770

Due Process and the Equal Access to the Courts of this Nation is not something that was historically provided to Indians and Indian Tribes. This Bill goes squarely back to that unsavory past. On that basis alone it should be abandoned.

In the hurried effort to put this Bill over on the Congress, those really responsible for it, and by that I don't mean the distinguished and well-intentioned sponsors of the bill, have defrauded the sponsors and the Senate in, among other things, Section 2 entitled Findings. It is there asserted that hundreds of millions of dollars federal funds have been expended in the eight years of the Cobell litigation. That is an absurdity. Whoever put forth that figure should be required to submit the evidence under oath and be subject to prosecution if false.

THE INDIAN CLAIMS COMMISSION ACT AND ITS IRREFUTABLE LESSONS

The Indian Claims Commission Act of 1946 was the last special legislation that attempted to set the equities straight between Indian Tribes and the United States with respect to any and all damages and losses caused by the government in its dealings with Tribes even if the basis of the claims were simply that the United States did not act "fairly and honorably." This section in that Act came to be known as the "fair and honorable dealings" clause. And yet when Tribe after Tribe tried to avail itself of the opportunity to present their claims they met with technical defense after technical defense and some of the worst bad faith litigation tactics that the courts of this country have ever countenanced. All of this is thoroughly documented in Professor Nell Jessup Newton's law review article "In the Courts of the Conqueror."

The lessons that anyone even marginally familiar with that history should have learned is that a special forum (there the Indian Claims Commission, and now the proposed Indian Money Account Claim Satisfaction Task Force) will result in ad hoc rules and a defense by the Attorney General of the United States that only seeks to defeat claims as he or she will perceive that to be their duty under the law empowering them to defend. This means, as history has shown, (Judge Lamberth is by no means the first or only federal judge to find that the attorneys representing the United States in Indian claims cases have engaged in unethical and unlawful practices before the courts) that "by any means necessary" will continue to be the underlying principle (if it can even be called that) of defending the claims before the new entity contemplated by S. 1770.

GENERALLY ACCEPTED ACCOUNTING PRINCIPLES AND AUDITING STANDARDS ARE MANDATORY

The continued, wildly inaccurate suggestions of how much money it would take to do a proper accounting owed to the Indian trust beneficiaries is just as misleading as the claims of what the government has spent so far in defending Cobell.

Section 3 and the term "accounting" are absolutely unacceptable. In addition to the reasons well-articulated in the testimony submitted by Keith Harper of NARF on behalf of the Cobell plaintiffs, Indian money and assets are just as good and valuable as anyone else's. Why should there be a reduced standard of performance of the duty to account? If the standard being proposed is not adequate for rich white people in this country then why should it be adequate for Indians who happen to be poor but for whom what little money they may have is all the more important for their very subsistence?

Members of this Committee, you must answer this question. Why the different treatment of Indian Money and Indian trust property? If the proposed different standard is not acceptable for your children, or your grandmother, then why should it be acceptable for ours?

Nothing less than the generally accepted principles of accounting and standards of auditing are acceptable. All trust assets, the use or disposition which should result in trust funds must be accurately and completely accounted for. S. 1770 does not do that. It is, therefore, unacceptable.

HISTORIC FAILURE TO PROTECT INDIAN TRUST ASSETS CANNOT BE GIVEN A CONGRESSIONAL SEAL OF APPROVAL AND CLOSURE THAT S. 1770 WOULD EFFECT

The United States, on its own, created the system of trust that its Executive Branch employees have bungled the management of. This imposed trust system is not something Indians asked for. When the United States fails to properly collect royalties due on our oil and gas leases, there is an improper amount deposited into our IIM accounts. Merely trying to account for the amounts deposited is unacceptable. The United States has a documented history of failing to protect our oil and gas property from theft.

Members of this Committee are certainly aware of the Commission on Fiscal Accountability of the Nation's Energy Resources (the "Linowes Commission") which in 1982 documented for Congress and the President just how thoroughly irresponsible the United States had been in managing and accounting for the Nation's and Indian energy resources (oil and gas, coal, uranium, etc.). The Congress responded by enacting the Federal Oil and Gas Royalty Management Act of 1982 ("FOGRMA") which was supposed to be therapeutic of the problems identified by the Linowes Commission.

There are now over 132 studies of the Inspector General's Office, the General Accounting Office, Committees of the House and Senate, etc., that have since documented the failures of the Department of Interior to effect the changes identified by the Linowes Commission and sought to be rectified by the Congress in its legislation. The same people at Interior responsible for this continuous record of failure (and attempted fraud to hide the failure) are at it again with getting S. 1770 introduced and attempting to defraud this Congress, the Courts, and Indian people once again.

Indian oil and gas production is the single largest trust resource that is used or disposed of that results in trust funds. The estimates in the government's own records indicate that between 1973 and 2000 approximately \$3.75 billion was received by the U.S. on behalf of Tribes and Allottees for their producing oil and gas leases. This is not an insignificant amount of money. And yet it has never been properly accounted for.

THE DEPARTMENT OF INTERIOR'S MINERALS MANAGEMENT SERVICE HAS A CONTINUED HISTORY OF INCOMPETENCE AND DEFAUDING CONGRESS, COURTS, AND THE INDIAN TRUST BENEFICIARIES

In 1984 the SSKA filed suit against the Secretary of Interior in the United States District Court for the District of New Mexico, Hon. E.L. Mechem presiding, to attempt to get the Secretary to perform his duties under FOGRMA. The government entered into a Consent Decree in March of 1989 whereby it promised to undertake certain reforms. Regrettably, the United States never revealed many of its crucial shortcomings in its practices and systems and thus was effectively able to defraud us and the court.

For example, in 1993 we were presented with a computer run from the Minerals Management Service of the Department of Interior ("MMS") which purported to be "clean" data and a compilation of all oil and gas sales for certain periods of time. The reason for the importance of this data is that it was used under the MMS Valuation Regulations effective March 1, 1988, to determine so-called Major Portion prices. (Nearly all tribal and allotted oil and gas leases for the period of 1962-2000 used BIA Lease Form No. 5-157 which provides in paragraph 3(c) that the Secretary is to insure that royalties are paid based on the value of the production and not simply the price claimed to have been received by the lessee. To determine this the Secretary is to examine prices for like or similar production, contemporaneous in time and location and to insure that the royalties are based on the highest prices paid or offered for the Major Portion of such production. The Secretary NEVER performed this duty until his attempts to do so began about 4 years ago.)

We examined that data which consisted of approximately 26,000 lines of gas sales and based upon very, very broad criteria of acceptability for accuracy of the quality column (which for gas is the Btu column) and we were able to determine that over

43% of the lines were clearly erroneous. For example, there were lines that claimed that zero Btu quality gas (in other words, non combustible air) sold for over \$660,000 per thousand cubic feet. The normal price range one might expect of 1000Btu gas would be in the range of \$1 to \$7. This data run is not atypical. Rather it is the established typical fact that the system used contains absolutely worthless data. If any on this Committee doubt this we would love to show you the information and explain how MMS had deceived Congress for decades of its incompetence in this area. MMS by the way is the second largest collector of federal revenues after the IRS and it uses the same systems with the same gross deficiencies on federal leases as it does on Indian leases.

CONCLUSION AND RECOMMENDATION

The irrefutable point here is that the amount in an IIM account may have nothing in common with how much should have been deposited and it therefore follows that the trustee must include in his accurate and complete accounting all sums which should have properly been paid under the leases. S. 1770 does not do this.

S. 1770 predicates the information flow to come from the Secretary. Members of this Committee cannot countenance that. For the reasons just mentioned, Interior has been engaged in the fraudulent deception of Congress for decades. The same people at the upper managerial level of Interior who perpetrated that fraud are going to provide the same fraudulent data. It is unconscionable. You cannot allow it.

The time periods in S. 1770 are woefully inadequate to do anything meaningful to develop and present the proper information in support of the claims.

All experts on the so-called task force must receive instruction in the meaning of the trust responsibility from the Indian perspective of enforcement and not from the government's perspective of evasion.

S. 1770 provides no representative participation as a matter of right for the Indian account holders whose rights are to be affected. The participants are the perpetrators. Does anyone doubt the outcome?

The amounts provided for are grossly inadequate given what needs to be done for an honest accounting. Committee Members, on behalf of the all allottees, I ask that this Bill be soundly rejected for the fraud that it is. No amount of tweaking can alter the conclusion.

Mr. HAYWORTH.

Mr. Chavez, we thank you. And those documents, your written statement if you would like to have that resolution submitted for the record, without objection, it will be included as part of the public record. We thank you for that.

Mr. CHAVEZ. Thank you.

Mr. HAYWORTH. The Chair would note in listening to the testimony of Mr. Chavez, I was reminded of one of my visits to the Navajo Nation when a tribal elder at a townhall meeting said "Congressman, you know what BIA stands for, do you not?" And I said "Well, what do you mean?" He says, "Well forget Bureau of Indian Affairs. We kind of hold the opinion it stands for Bossing Indians Around." And perhaps it was somewhat injudicious, but it deals with part of the problems and part of the challenges we have faced.

And, again, we take no personal umbrage of the frustrations, believe me. Based on Tuesday night's, many of us share the same frustrations as we have been dealing with Administrations of both parties. It is reflected in the judgment of Judge Lamberth. And it is a challenge we are dealing with.

Again, to all four, we thank you for the testimony.

And using, again, the prerogative of the Chair and mindful of flight schedules, I know that my two junior colleagues from Arizona may have to catch flights, so I would like to turn first to the gentleman from the First District now following with our friend from southern Arizona, Mr. Renzi.

Mr. RENZI. Thank you, Mr. Chairman. And thank you for allowing me to go first. I do have a flight and I am thankful.

I have read all the testimony this afternoon. And, Mr. Berrey, I am very taken by your—not just your comments, by the fact that you offer resolution, a fix, in the form of your support for conflict assessment using the Udall processes. The people down in Tucson.

Can you help me understand that a little bit more, please, just quickly in the time that I have. And particularly the opposition to it, which is that it could add a lot of cost.

Mr. BERREY. Well, first of all, I think it is cost effective. It is—our quesstimates are for about \$300,000 you could do a conflict assessment. And we believe what that will do is shorten the time line of what the settlement discussions will do, because it will clearly delineate all of the issues and claims, and it will give you all a better vision of what is going on.

Actually, in the audience is a lady by the name of Sara Palmer from the Institute that I asked to be here if she could have the opportunity to speak with you after the hearing.

Mr. RENZI. One of the pressure points that was put on particularly Congressman Hayworth, Congressman Flake, myself, as well the other gentlemen here today during the vote on Tuesday night was, and Ms. Ramos you might be able to help address this because I think you alluded to it in your comments, was that the Government of the United States has spent millions of dollars, close to billions of dollars, going through the accounting to come up with one account that was past due \$64. It was being used as leverage against us here to vote in favor of the Appropriations bill. And I go over here to my coach and I get the straight skinny most of the time, and he helps me.

Mr. HAYWORTH. And now the skinny is accurate.

Mr. RENZI. Yes. Absolutely.

So could you help me, particularly push back? I need some help. Because we are going to be fighting this again with our own colleagues and want to be able to put out good information. The idea the Government has spent billions of dollars or close to a billion dollars and found one account with \$64 past due. Anyone on the panel.

Ms. RAMOS. Also I have with me Mr. Jacob Moore, and I would like to recognize him as our intergovernmental relations. And also Ms. Katherine Arragone that has been working very closely on this.

In my testimony, I noted several issues with—that there should be full disclosure of material documents. And I think that goes to show you that when you look at the accounting, and I do have a background in accounting, that sometimes when you do an assessment, that you not only pick out certain accounts, you have a small percentage. And when you do an accounting, you look at small percentages. And sometimes those accounts do not reflect the whole entire accounting. And just because you only found one account that had an overdue \$64, that there are other accounts in there that do not have substantial amounts that need to be looked at.

And the other thing that I made the comment on is that there should be no preset cap for settlement prior to negotiations. I know that there has been some talk about putting a dollar amount in the Congress to say that we are only going to go up to this dollar

amount. And I wanted to make sure that that got into testimony that Salt River does not recognize that and does not want that.

Mr. RENZI. If there was an offer on an individual voluntary basis to individual accountees to settle post accountability—I do not know that we can offer those without going through some sort of accounting so people really know what they are settling on. I think that is what you are referring to in your clause.

Do you think on a voluntary basis that might be a way to breach or reach across, find a compromise?

Ms. RAMOS. I believe that if anyone, you know, voluntary wants to do that as far as their IIM accounts have that option available. But I do believe that as far as accounting background, no one can go in and say that we are going to take something if you do not know the full disclosure. So therefore, as our tribe and accountant I would not let anyone go forth and accept something if they do not know the full disclosure, if they do not know the accounts coming in and the accounts going out.

And I think on a voluntary basis that would be up to the individuals to do that.

Mr. RENZI. The Tuesday vote included also one other pressure point Mr. Berrey spoke about, the cannibalization pressure point was pushed on us to find a way to vote for it. And that, hey, if you do not vote for us, then this account or paying this settlement is going to come out of the BIA funds somewhere, so therefore you should go along with the appropriators on this. We held here on that.

The other pressure point we saw, and I want to direct this, too, with Mr. Garcia, is a memo supposedly that was floated by Ms. Cobell but asked Native American tribes not to settle in the hope of the many billions of dollars that were forthcoming.

You were very innovative in your testimony when you talked about this utilization of the Indian Self-Determination and Contracting. Can you expand on that, please?

And I will sum up with that. Thank you, Mr. Hayworth.

Mr. HAYWORTH. Thank you, Congressman Renzi.

Mr. GARCIA. I think for the Navajo Nation, and in particular the Indian allottees, we are the biggest tribe in the United States and we are the size of West Virginia. And we try to explore ways of how we can provide direct services to our allottees and to the people.

One of the ways that we are right now and is in the talking is the contracting this particular program out. Right now as it is, I think we go through four different departments before it actually gets to the people's hand. One of the biggest problem that we see here is with the MMS, Mineral Management Service.

I think there are a lot of problems because the payments are done just on land number, a number that is given to certain land status. And it would be, we feel, to our advantage to directly contract with direct services to the producers, which will be oil companies. In our case, the majority of our allottees receive royalty payment from oil and gas.

Mr. RENZI. Thank you.

Thank you, Mr. Chairman.

Mr. HAYWORTH. And Mr. Chavez has one comment he would like to make, and I will let him expound.

Mr. CHAVEZ. Going back to your statement about the accounting, that is the main concern that we have with Senate bill 1770 is that it really starts to move away from the full accounting of what was really pushed forward in the Cobell case. And to me if that could be tied into the gap, back in there again, I think that is something that could be looked at. But I think the bottom line on everything is the accounting needs to be there regardless.

And I do not know the example that you are using about the \$64. That is probably one out of how many hundreds and hundreds of examples that you are pressured with. I think that is something that, you know I am not sure if that is even a valid point even now. But I think to stay with the accounting part of it, that is really crucial because that is something that the BIA has always taken the easy way out.

A good example is the 1982 Achievement Act. We objected to that. I do not know if any of you members of Congress even remembers that.

The Achievement Act of 1982 was where if a land, an allotment gets to a certain percentage, that percentage goes back to the tribe. And they did not even get the input of tribal people. They just went directly to Congress and Congress passed the law. But it was challenged by tribes, and it was their—found out it was illegal.

But those are just examples after examples that the Bureau and DOI has always taken the easy way out. And this is just another example of that. And 1770 just gives them another way out of a mess that they created.

Mr. HAYWORTH. Mr. Berrey, you had one comment?

Mr. BERREY. Yes, I was just wanting to comment to the \$64 check. From my understanding, they spent \$20 million to research the five main plaintiffs in the Cobell case. And the cost of searching all the record locations across the country and coming up with that figure was \$20 million.

And I think that says two things. It says, number one, that the Department of Interior's terrible records and it is going to cost a huge amount of money, no matter what type of accounting is done.

And number two, the five representative plaintiffs do not clearly represent all tribal people. If you would take people from like the Osage Tribe or maybe the Northern Arapahoe Tribe, or even the Quapaw Tribe that have had huge amounts of money go through their IIM accounts as opposed to some tribal members that have just had land allotments that had grazing, you would probably see a greater problem than \$64.

But I think the ultimate question is there is people in my tribe that would be willing to settle. They would probably be willing to do a lot of things if they just had the opportunity to clearly understand what was available and what were their opportunities. And it may not necessarily be a full and clear accounting because we are realistic. We know that if we spend \$10 billion on accounting, it is just going to Deloitte & Touche, and other accounting firms. It is not going to go to Indian people.

So, I think it goes back to this conflict assessment. If you start out and understand what it is and clearly communicate that to all the people, it'll make the questions a lot easier to handle.

Thank you.

Mr. HAYWORTH. Well, speaking of questions, we turn to the gentleman from the Seventh District of Arizona, Mr. Grijalva for his questions.

Mr. GRIJALVA. Thank you very much.

And let me follow up on the conflict assessment, if I may, with you, Mr. Berrey and also as part of the questioning, I would appreciate any comments from President Ramos, President Garcia, Mr. Chavez.

As you know, as I understand the process, through the conflict assessment, you assess the template or the table for what is going to be discussed in terms of negotiated settlements, conflict resolution, et cetera.

Mr. BERREY. Yes.

Mr. GRIJALVA. And as I heard the testimony today, you had the principles of settlement that President Ramos and the points that you made that I thought are very strong and very valid. The four points that you made yourself as any settlement options are discussed, those four points would be important. The points that President Garcia made, which had to do with proper accounting, if I am not mistaken. And also the issue of past damages, that that must be part of the discussion as we move forward and the trust accounting within Treasury as important point. And for lack of a better word, important condition as we move forward.

And Mr. Chavez's five points and conclusion dealing with S. 1770, that I concur with you on those opinions, by the way. But also setting conditions, for lack of a better word.

So does this conflict assessment, because it is a conflicts issue, given the points that your colleagues have made here from representing their people, does that preclude the conflict assessment because we are laying template with some conditions on it as we move forward?

Mr. BERREY. I do not think so. I think what it does this gives whoever does the assessment, a neutral third party some places to start.

Mr. GRIJALVA. Would you agree with me, though, that as a principle to start with, that is the assessment process is that people go into this discussion as equals, and that is what helps move the assessment along?

Mr. BERREY. Right.

Mr. GRIJALVA. And there is a neutral third party.

Would some of the conditions that we heard—and I apologize to you for using the conditions, but I think it is appropriate. We heard today that they are part of that assessment process to move forward. We are not starting with a clean slate. We are starting with some conditions. Is that appropriate as well?

Mr. BERREY. Well, I think how all conflict assessments start, because you are usually in this contentious litigation format.

Mr. GRIJALVA. OK.

Mr. BERREY. So you always come into it with conditions. I am sure Interior would have conditions they would want. Justice would have some conditions they would want. All the parties have conditions before they go into any—when they are adversarial.

I think that is just part of the discussion. But once the reality replaces the rhetoric and there is a more clear understanding of

what really it is we are talking about and who the stakeholders are, and what is the universe of issues.

This is not as complex as it seems. My tribal case I believe is more complex. We have the largest Superfund site in our states. We have the largest lead and zinc mining in the history of the United States. We have allotments. We have tribal. We have a lot more issues and claims in our lawsuit than the Cobell case, even though theirs is bigger in terms of numbers of people.

Because of this assessment we were able to divide out our claims and take different paths on the recommendations of the people that did the assessment to come to a resolution, which we have agreed to a settlement with Justice and Interior to resolve our claims.

Mr. GRIJALVA. Could you consider—I understand the point. Would you consider as a requirement past damage assessment and proper accounting if we went in through conflict assessment process?

And I agree with you, you know, the Udall Center and the Environment Conflict Resolution Group is an excellent group. Done wonderful work, at least in my District in terms of very delicate and tough issues. But this is an issue that, you know, I want to have an understanding that if we are going in through that process, which I would be comfortable supporting, that there is also some protections that we are bringing into the process in case it does not work.

Mr. BERREY. Well, I think if it does not work, they always have the core.

Mr. GRIJALVA. OK. Thank you.

Anybody else want to respond, Mr. Chairman.

Thank you, sir.

Mr. GARCIA. Congressman, I think a point of interest to remember here is there is a lot of interest and there is a lot of talk about settlement among the Indian people in my community who may be elderly. I think it is important to know that as a Native people we have various type of resources, what is there on Indian land. And I think it is important to know in my case where I represent, the majority of them are oil and gas. So I think it is all going to be different for all Indian tribes.

Mr. GRIJALVA. Thank you.

Mr. HAYWORTH. President Ramos has a comment.

Ms. RAMOS. If I may? That is true about the settlement. However, in my statement on number three that I clearly stated that the litigation and the accounting issues have to be separate. We went to a BIA reorganization in Las Vegas last week. And because of the push of the Cobell case and the trust issues, they are trying to put everything into one large package. And we cannot do that. And we have to separate it out because with the BIA and reorganization, they are so time consuming and they want to pressure us into thinking that this is the best for the community. And we have to step back and take a look at it and make sure that these two issues are not being intertwined. And without the support from Congress to say, wait a minute, we need to step back and we need to look at it to make sure that we are handling one issue in one hand and the other issue in the other hand.

So I just wanted to make that clear with the issues that that have—

Mr. HAYWORTH. And thank you, Mr. Grijalva.

Let me turn to my friend from the new Sixth District, as I call it, Mr. Flake.

Mr. FLAKE. Thank you, Mr. Chairman.

Just following up on the conference resolution, conference assessment model, how likely is it—to anybody—that there is sufficient agreement now among the tribes to go that route, or is there sufficient agreement somebody goes that route to see how much agreement there is? And how much agreement do you need to have to take that next step? Because I think all of us agree that whatever money would go into the auditing and accounting ought to be going to services and settlement.

So how much agreement is there right now in your estimation, Mr. Berrey?

Mr. BERREY. Well, I think there is a lot of agreement that something has to be done besides what the track we have been going down. And the more you talk to people out there on the reservations, the individual people, they want to figure out a way to settle.

So I think with that, just the fact that people want to settle, in order to make it a proper and equitable and fair settlement process, you have to start with the success so you clearly understand going into a settlement process, what it is you are trying to settle. So I think the answer is, I think there is a lot of support.

I know the National Congress of American Indians sent all the people in Congress a letter supporting a conflict assessment.

I have not heard of anybody say they were totally against a conflict assessment.

And I think it needs to be understood that the U.S. Institute I do not think would be the conflict assessor. They would just be kind of the consultants to the two appropriate committees to help them pick the people to do the assessment, and they would help consult with you all so you knew what was going on and as it was happening.

I think they have the list of the kinds of practitioners that do that kind of work.

But to answer your question, I think there is a lot of support for an assessment. And I do not know how to quantify it.

Mr. FLAKE. You share that view, Mr. Chavez?

Mr. CHAVEZ. Again, my dealing with this agency for 20 years, as long as you agree with them, it works. If you definitely have some—your own opinion or your own plan, or if your plan comes ahead of theirs, then it is the wrong idea. And that has been a pattern. And I think that this is going to go right down that same road. I think it is a good idea. I think it is a start. But I would almost guarantee you that if the Indian communities, if the Indian people were to fair out there what they are, the government, which DOI and BIA represents, then it is going to be a terrible idea. And it is going to be told to you guys again.

Mr. FLAKE. Thank you, Mr. Chairman.

Mr. HAYWORTH. Thank you, Mr. Flake.

Let me turn to my friend, the gentleman from Samoa.

Mr. FALEOMAVAEGA. Thank you, Mr. Chairman.

I was listening with interest to Mr. Chavez, not only his statement, but also his observations of the BIA. I happen to agree with him.

There is a certain state of mentality in that agency, and with all due respect I am not being personally critical. But it is not only a sense of attitude, but it is just different—and this is not in any way to say that it is just with this Administration. This has been the way it is with any Administration.

I think that there is not only a sense of tremendous frustration on this very issue. When it has been well over 13 years now and we are still grappling with this issue. We have even expended \$20 million just to even attempt to do an accounting. And we could not even get to first base when we spent \$20 million, we could not even touch the tip of the iceberg about the whole issue years ago.

And regarding what Mr. Berrey said, this is not a complex issue, but I do not know. We are looking at 1,400 accounts and some 315 tribal interests in this issue. You are talking about a half-million Indian accounts to go with it. Some estimates are between \$2.5 to about \$10 billion that is in question. So it is not an easy issue.

One of the problems that I think we are also confronted with Mr. Chairman is that whenever an Indian-related issue goes before the courts, the Congress seems to be very reluctant to get into passage of legislation simply because we do not know what direction or what results they are going to produce on this court litigation.

Look at it in another way, it is a copout for us to say we cannot do anything because now it is before litigation, before the courts. And the Cobell case just adds more fuel to the fire. I think it really is the most substantive resolution that has come up with Judge Lamberth's decisions. But you notice now, the Department of Interior has literally built a fence around itself. They do not want any outside DOI individuals or organizations to be part of the settlement process.

Now, I want to ask the members of the panel that this suggestion by Secretary Norton that we bump another official within the Department of Interior, we call him the assistant secretary for settlement trust fund. I wanted to ask your comments. Do you think that might add visibility within the department? Because we do have a problem there. Do you think it would really provide a solution to the problem, or will it be another problem added to the problem?

I want to ask your response.

Mr. BERREY. I do not think that is a good idea personally. I think this is an issue if they could have fixed it, they would have already fixed it.

I think it is an issue that is going to take the input of people like you all, people from Congress to have to step in and help to protect the rights of the individuals.

And earlier I did not mean to say that it was not complex. There are more complex pieces of litigation out there that cannot be solved through these settlement processes.

I think that just creating another office in the Interior to settle this is not the proper way to do it at all. I think I would rather see the appropriate committees in Congress take more control and have more input.

Mr. GARCIA. Congressman—

Mr. FALEOMAVAEGA. You call me, John, if you cannot pronounce my name.

Mr. FALEOMAVAEGA. It is Faleomavaega if you would like to try it.

Mr. GARCIA. Thank you for the opportunity.

I would agree with my colleague here, Mr. Berrey. I think that is just bringing in somebody else with a whole new array of different ideas. And it really does not—would solve or at least address on how we can dispose or come to a resolution on this issue that is in your hands right now.

I think the far most important is to get back with the real people, the affected people and work with them, the tribal people. And I think that would alleviate and come to address the issue that is there.

Mr. FALEOMAVAEGA. Well, —I am sorry. If I recall, Secretary Norton did mention that there was tribal consultations pursuant to the reorganization plans that are being made right now. But we get an entirely different reaction from our Indian community. The kind of tribal consultation was one or two people—selected individuals. And they went about and said we have taken care of tribal consultation.

But I am quite sure that on a bipartisan basis we want to find the solution and be helpful to this issue. But the tact that the Administration has taken is very hard line. I want to ask the members of the panel how do we cut through that? What would you suggest on how we as members of Congress could provide a positive solution?

I think there are none of us here on the panel, I mean on the Committee, who would ever think that we want to do something without consulting with Indian Country. But I am sorry to say that our friends in the Administration are making claims that, hey, we have done this already and we do not need to consult with Indian Country anymore.

I just wanted to ask what your response is to that? Because I am very concerned that this is not the way current policy as far as Indian issues are concerned have been taken by Secretary Norton and her subsidiaries. But I may be wrong, but correct me if I am.

Ms. RAMOS. You hit it right on the head as far as consultation. Exactly that. They call one or two tribes and they call that consultation. There are over 500 recognized tribes in this United States, and like was stated first, the first Americans. And when they have consultation, they come forward and let you know what they are going to do already. They have a plan in mind. And even though the tribes may say no or they have their ideas, they still push forward their own plan.

And I think with the other issue that you stated, all it does is the same thing that BIA constantly does, and add another layer of bureaucracy. With bureaucracy and bureaucracy we know it never works. The wheels just spin, spin, spin and nothing ever gets done.

And in order to have true consultation, and we have spoken to Mr. Hayworth, we have spoken to some of our Congress people, every tribe needs to be at the table. Every tribe needs to be represented to make sure that you have true consultation, to make

sure that the ideas that are given are taken at full face and actually looked up, and the ideas are assessed to see they are going to work.

We are all unique tribes. We have our own individualism. And we each have our own constituents and all tribal members that we have to take care of. But one thing that we know with working with the other Arizona tribes with our proposition 202 that we had, that if we stick together and we come together united, that we can solve this problem. And I think that is one thing that Congress really needs to hear from the tribes.

Thank you.

Mr. FALEOMAVAEGA. I am sorry, Mr. Chairman. I did not mean to prolong the question, but I just have one more question and observation.

There seems to be a consensus that the only real substantive solution that has been brought forth that would seriously assist Indian Country with the issue of trust funds has been the judgment by the Federal court by Judge Lamberth. Other than that there seem to be some very strong disagreements on the proposed bill by Senator Campbell from the Senate side, Senate Bill 1770. So I would like to ask the members of the panel with those two on the table for consideration, what are other possible one or two options that we could take right now? To go back tomorrow in the Congress and say OK, let us work on it. Do you think we can attach something that might be better to the current proposed legislation by Senator Campbell to add on to it if there are some strong feelings from Indian Country that some of the provisions in that proposed bill just are not acceptable to Indian Country. Or am I going far left or far right, or what?

I mean, I just want to get a sense of where we need to go from here. Again, it seems to me that the only two substantive things that are now for resolution is the Federal court judgment decision and Senator Campbell's proposed legislation.

Mr. Chavez?

Mr. CHAVEZ. I think the comment that Mr. Berrey, I guess—what did you call that?

Mr. BERREY. The conflict assessment.

Mr. CHAVEZ. Conflict assessment, the issue if it ever comes to that and my comment regarding if we go to the table and we have a third party there, and the rules really come out to where the Indian people are coming out ahead, then it is a bad rule.

I think the only way something like that would work would be if—it is a farfetched idea, but if that occurred, the BIA would not even be involved in that process.

I think something that—I think the banking world, the finance industry would even be involved in it where they would be the ones at the table with the Indian people, where the minute that these bureaucrats, lifetime bureaucrats start seeing that their bosses are being taxed with billions of dollars and they have to appropriate them, it is a new rule. Then they start backing away. And this is where it really comes to an impasse. And I have seen this over and over, and that is where it really stops.

So I think it is something that, you know, that maybe if we ever go that route, I think it is something that I have always thought about we could do.

Mr. HAYWORTH. Well, let me follow up, because I wanted to defer to my colleagues and mindful of flight schedules, I know that Mr. Grijalva had to run catch a plane, Congress Renzi will follow soon here in a second.

Mr. Chavez, you brought up something that we have talked about before, and I do appreciate the suggestion, Mr. Berrey, in terms of trying to cut through in a very picturesque way and untangle the spaghetti, which I think is an appropriate way to talk about all the different issues we are dealing with here. But it seems that in some sense in forensic accounting the trail has gone cold. We are looking back to the 19th century, accounts that were either misrepresented or lost, or destroyed. Some accusation, and again it cuts across party lines with previous Administrations, not taking into account records or maybe even wilfully destroying some records in these tribal trust fund accounts. It is a small wonder that Congressman Kildee and I, and my friend Eni Faleomavaega remembers this back in the 104th Congress when we were given charge of a special task force to look at this, it was characterized as the crime of two centuries. And now here we are in the 21st century trying to deal with.

But let me pick up on something Mr. Chavez says. And a note to our friends who have joined us here today as observers, this is why it is so good to come outside of Washington to talk people. This idea was first advanced in some hearings a while back.

To take it out of the hands, for sadly with the distrust, despite a lot of dedicated folks who work hard in the Interior Department and in the Bureau of Indian Affairs, an element of what Mr. Berrey talks about, Secretary Babbitt tried within the strictures of Government to appoint a special master—a gentleman not too far away up the road here who was frustrated and walked away from it.

We have financial institutions, some accounting firms, some forensic accounting procedures and some folks who specialize in forensic account.

Just curious to get an informal poll of our four excellent witnesses today, is one possible solution to look outside, not so much for a special master per se, but for someone who is outside of government to take ownership of a resolution understanding the pitfalls that consensus does not always mean unanimity. And we have heard differing opinions on legislative and paths to take. But should we look to the business community? I guess our dream candidate for this job is someone who grew up on the reservation in some tribe, who has negotiated the concrete canyons of Wall Street, who understands what is at stake, who understands the intricacies of forensic accounting and can take us back as far as the trail goes, and then move forward. Because, President Ramos, one of the things you said was in your many suggestions, and I am just paraphrasing here, making a full accounting.

Well, some of the evidence is gone. The trail has gone cold. So just informal poll, picking up Mr. Chavez's idea, do we find someone, do we give charge to someone out of government to be a

commissioner on the resolution of this problem? Not to add to the layers of government, but to find the resolution?

I would just be interested. Let me start with President Ramos and go down our witness panel here.

Ms. RAMOS. I agree, because Mr. Moore has been talking about that issue and we Salt River have said that would be the prime thing to do is to have someone outside the organization to do that, especially someone that has accounting background.

I do know that with accounting and with some of us going through some auditing themselves, it is costly. However, you do get a better understanding of what your records are. And I would agree that we need to have someone outside the organization handle them.

Mr. BERREY.

I think it is a good idea for the accounting portion. But I think until you understand all of the other pieces of spaghetti that are creating this problem, the fractionalization of Indian lands and the issues that are not part of the account just focusing on the accounting and bringing someone in is not going to solve the problem. That is why I think, again, you have this assessment and you will understand more clearly how much of this problem is purely historical accounting and how much is other things. Because there is a lot of issues that are behind that that I think need to be more clearly defined. Especially for actualization of Indian land.

Mr. HAYWORTH. President Garcia?

Mr. GARCIA. I somewhat agree with Mr. Berrey here. I think it is very important to know that those back 50 years ago, we only had one allottee that probably had 160 acres of land. And I think as time went on up until now, it maybe is some 80 or 100 heirs to that allotment. It is going to be somewhat very difficult, but how do we arrive at the proper amount for compensation? I think someone needs to go back and look at each allotment and how many addition of allottee of heirship there has been on particular land. And I think it would be the—to bring in someone that is nongovernmental, someone that is very impartial and should be coming from—with some banking and accounting practice.

Mr. HAYWORTH. Thank you, Mr. President.

Mr. Chavez?

Mr. CHAVEZ. And, of course, that there was a suggestion made by me, and I think the only fact here that you probably missed there was that has knowledge in factional land. I mean, that is the—if you could find that person, you probably would make a million dollars with it today. You know, it is hard to find that individual out there. And I think it is hard to find that person.

But I think the important thing here is getting it out of DOI and BIA. I think that is the thing that has been frustrating our organizations for years and years. And I think the criteria or the issues that I think John and Calvert and President Ramos are bringing up, I think those need to be included in that. But I think at the same time, I think the groups the representatives of the allottees of various tribes, they need to be involved.

I remember testifying before the Senate Indian Affairs Committee back in 1988 on the same issues. Well, even back then we used to bring up what if it was your account, you went to Wells

Fargo and you had a trust fund and you were just putting in money. And you were putting in money years and years and years. And then 1 day you went to check, and there was no money. And they told you, well, we do not know. We threw away all the records. Would you just walk away and say, well, maybe you could just settle out for \$1,000 over the past 50 years? I mean, this is exactly what we are doing.

And I think that this is something that I guess we really kind of have to bring to home. But yet we realize what we are saying also when we start saying all the way back to the 1800s. You know, we realize what we are saying. Because the trail does go cold at a certain point. But, understandably, there are allotments that have up to over 1,000 interest holders right now in our area. And we have had a lot of problems just even running infrastructure water lines, electricity, whatever because of that.

So, fractionation is a big problem. And I think that needs to be inserted in that knowledge of this person.

Mr. HAYWORTH. Well, let me try to paraphrase, since one of our challenges is to achieve a consensus. And while we welcome all the public comments on the record, as we are trying to deal toward a tangible solution.

There needs to be then, it seems, two elements if we take into account everything that has been said here. A group understanding how to do the conflict assessment that has the proper orientation historically along with someone from the outside who could do.

A third question in closing, and I do not mean to open a can of worms, and just in terms of conceptualization since the trail goes cold without capping a settlement but setting some—we talked about tribal elders and we heard a very eloquent prayer from Ricardo earlier about those in the twilight of their years. Does it make sense to set a demographic historical accounting date, not like—you know, a couple of times the appropriations guys have tried to short circuit the process. They go, we will go back to 1980, oh, we will go back to 1977. And it seems to me that the fundamental flaw any fair-minded person has is, wait a minute, we have people who have been affected their entire lives. Does it make sense today to look at a demographic or chronological life span? Is that how we are able to get our arms around this problem since the trail goes cold on so many accounts?

It is just a question for all the panel members again.

Mr. BERREY. It is about the exploitation of natural resources whether it is grazing, farming, mining, oil and gas. That is what it is all about. And that is what the Department of Interior is like the apartment manager for these 56 million acres of land. And I think it is chronological.

And if you understood the exploitation of these natural resources over time, and it is not—we are not talking about millions of years. We are talking about just 150 years or something. You know, there is a historical perspective that you could put on that exploitation that is not going to be difficult to get a graph on.

And you could look at the different tribes, how their natural resources have been exploited. When it started. When the largest activity was. And you could narrow down your focus and do, maybe,

some type of sampling or something less than a transaction by transaction accounting.

Mr. HAYWORTH. Any other comments from the panel?

Mr. CHAVEZ. I agree with Mr. Berrey.

Mr. HAYWORTH. OK. President Ramos?

Ms. RAMOS. I just wanted to make a comment, too, about the outside, and Mr. Moore gave me a good suggestion. Is that as far a commission with teeth, it has to be enforced with the changes.

You talk about records going cold. Yes, it is true in accounting that you want to start from a good starting point and move forward. However, you have to remember that as Mr. Berrey stated, there has been some injustices.

We do not know exactly how much should have come into those accounts. That is one issue, and that has to be raised. Is that we never know if the exact amount was put into those accounts in the first place.

There are records that can be taken from a wide variety. You can take records from the tribe. You can take records from the companies where all the Indian lands themselves. And you can have a good starting point. But that starting point has to be agreed upon amongst everyone. It cannot just be an arbitrary number or figure or year that has come out from the Congress. It has to be something that everyone agrees to.

Because if you do not have that starting point, you are not going to be able to go forward.

And also the other question, the other issue is that if we do not have a good starting point, that it would leave out the heirs in the future because of the fractionation like the others have stated, it may be hard to do something but if you are determined and you want to get the best accounting records, you will start at the best starting point. And what I would say as far as having a starting.

The other issue that I wanted to bring up is that we do have to have the input from the tribes. We have to have the input, because if we do not and, like—I am not even going to try to say your name. But like you stated, if we just consult and say we are meeting one or two tribes, then it is not going to work for the entire nation.

Mr. HAYWORTH. I think the point is well taken.

I think Interior started well when we were dealing with this in the previous Congress. And I know we had around the country many different listening sessions. A lot of people came in to talk. And, again, we are continuing the process now.

I guess the challenge we confront, and what we certainly appreciate, are the different alternatives you offer here today. The key for us is to move in a reasonable, rational way understanding we are not going to develop unanimity. That is a great and noble goal. But none of us in the political process ever seem to get there on these contiguous pieces of legislation. But moving to find a way to achieve a consensus. And we certainly welcome those comments.

Let me turn to my colleagues and see if they have closing.

My friend from American Samoa.

Mr. FALEOMAVAEGA. I just want to say that it is ironic that we discovered this negligence on the part of the Federal Government as far as the providing or taking care of the Indian Trust Fund for

all these years. For now, the roles are reversed and now all of a sudden our friends in the Federal Government are being very, very careful to make sure that the American taxpayers' money is not going to be excessively given to the Indians. I do not think there is anybody questioning that somebody stole the money. It is there. You know, we do not have to be looking for it like we have to burden the American taxpayer for additional money to pay the Indians. No, the money is there. But it is the question of identifying where and how, who, when, why; not to say that somebody stole the money. It is there.

I have always wondered, Mr. Chairman, if we can give \$87 billion to clean up Saddam Hussein's mess, I think maybe \$2 or \$3 billion is really not asking too much, do you think. I would suspect, Mr. Chairman, just as it was in the 1970s, ironically one of the greatest Presidents that has helped Indian Country, Indian issues is Richard Nixon. And the reason being is because the President himself said this is the way I want this issue to be taken care of. As long as it does not reach that level of what we are discussing here, of the Secretaries and the subordinates and others. It is not going to happen and we are going to continue another 10 year period, still grappling with the issues and still going to have those very, very dedicated bureaucrats, if you will, who are going to make sure that this money is not going to be misspent.

You know, we know the Enrons, the global crossing and our good friend who is a certified public accountant, President Ramos. Even the account process. We do not even know what a proper accounting procedure is. Even the Federal agencies among themselves have different accounting procedures. So what does this come to? We are frustrated even more on how we are going to provide a solution.

Mr. Chairman, I like the idea of having a settlement solution or a third party. But the problem is that our friends in the Administration do not want someone, a third party to do it or an organization.

So we are back again to square one then. And I am open. I just want to see where or how can we go about to find a final solution to this.

I am scratching my head, Mr. Chairman, and as I am sure Jeff is doing the same. But we really want to find a solution to the problem. It seems to me that the only real substantive solution that has come forward is that we have had to take this matter to the Federal courts. And thank God for Judge Lamberth for his decision. I hate to say this is judicial legislation, but the problem here has been very difficult for us even in the Congress.

And with that, Mr. Chairman, I am sorry to take time so long. My name is Faleomavaega. It is very easy to pronounce. If I can say Shii Shi Keyah, I am sure that our friends here can do the same.

Thank you, Mr. Chairman.

Mr. HAYWORTH. Thank you. I thank the gentleman from Samoa. And, of course, some of us try to get intimate, and we just call you Eni, by your first name, and that deals with any of the pronunciation.

My friend from the Sixth District, any closing comments?

Mr. FLAKE. I just want to thank the panelists. This has been extremely informative for me. This has not traditionally been an issue that I have kept up on. And so this is very informative. Like Eni, I think we are all scratching our heads to try to figure out where we go from here. But this will certainly help as we make decisions in the Resources Committee.

Thank you all.

Mr. HAYWORTH. Thank my friend from the Sixth District.

It has been said that by one of our congressional colleagues as we were dealing with corporate scandals, that if you really wanted to see scandalized accounting, just take a look at the Government of the United States. Sometimes you laugh amidst the frustration, and yet to end our time together on a hopeful note, what especially impresses about all of our witnesses, again, is they came to the table with genuine recommendations that may not be exactly from the same point of view. But after all, that is the essence of our constitutional republic and the ability to effectively govern. To take these different ideas, to move toward conflict resolution, to maintain a healthy skepticism. And here is hoping despite the challenges we confront from a variety of different areas, that we will be able to work with you and all of those in Indian Country to achieve a consensus that in an imperfect world can be a reasonable rational solution. That is our goal.

To those who join us here, we thank you very much as we bring Congress to the people. And we will continue to seek your input.

And if there is no further business, again, we thank the members of the Committee and our witnesses.

And once more, I would be remiss if I did not thank the Salt River people Pima-Maricopa Indian community, this beautiful Lehi facility. We could hear the kids down at the boys and girls clubs.

We know that others have comments, and we will be happy to include, in fact, with hearing no objection, I would ask unanimous consent that those who have prepared written statements or other perspectives that they would like to add to the record, may do so today. And we will achieve the purpose of getting your input, even though our time grows short here on our schedules.

So we would ask if you do have other statements and comments, to submit them for the record in this hearing.

And we look forward to discussing with many of our constituents here at home more on this topic in the days ahead.

Again, we appreciate the interest and participation of all tribal leaders, members and members of the public who joined us today and our Committee meeting.

Let me yield to my field.

Mr. FALCOMA. If the Chairman would yield again. I am sorry for talking so much. But I want to share with our Indian brothers and sisters the problem that we have in Washington. I have been in the Congress now for 15 years. This is my eighth term. Even though I do not vote on the House floor, I do vote in Committee. And I do want to say that, and we have a saying—"I am not trying to comb his hair," but the fact that this gentleman has taken the initiative, being a member and a Co-Chair of our American Indian Congressional Caucus, you just do not know how

important this is among the members in having to deal with Indian issues.

The fact that there is so much competition and many priorities, sometimes things just do not seem to get on the radar screen. Indian issues have always been very difficult for members of the Congress to deal with. And, again, Mr. Chairman, I would be remiss if I do not offer my strongest commendation and thank you for your personal commitment in helping our Native American community people from all over the country. Not just for your State of Arizona, but for the whole nation.

And I thank you for this commitment. And I sincerely hope that you are going to continue serving as Co-Chairman of our Caucus—not only because he is a member of the Resources Committee, but he also serves on the Ways and Means Committee. So, he gives a good eye about your taxes, too.

So with that, Mr. Chairman, I do really want to commend and thank you not only for holding this hearing, but also for the tremendous effort that you made over the years to give assistance for our Indian Country. And with that, I thank you.

Mr. HAYWORTH. All right. I thank the gentleman from Samoa for his comments.

Again, I thank everyone for coming. Those who are in the audience who are here to observe or may take a point a view, again, we would like to remind you we are happy to include your comments in the record today. And I have a feeling that this can be the subject of ongoing townhalls across the State of Arizona and across Indian Country.

One final note that I make from time-to-time, and some of our friends in the press may look at the remarkable bipartisanship here. As I say to many who visit us in Washington, D.C., though we sometimes are counted along party lines for purposes of organizing the House, there are really only two types of people who serve in the Congress of the United States; those who represent what we still call Indian Country and those who represent what was once Indian Country.

And with that note, we thank you all for being here.

And the Committee stands adjourned.

[A statement submitted for the record by Nora McDowell follows:]

Statement of Nora McDowell Chairwoman, Fort Mojave Tribe; President, Inter Tribal Council of Arizona

Good Afternoon. I am Nora McDowell, Chairwoman of the Fort Mojave Tribe, and President of the Inter Tribal Council of Arizona. I will begin by expressing my appreciation to the members of the House Committee on Resources for the invitation to provide testimony at this field hearing on “Can a process be developed to settle matters relating to the Indian Trust Fund lawsuit?”

Initially, I will speak to a set of principles the Inter Tribal Council of Arizona supports in an effort to achieve meaningful trust reform. It is the Inter Tribal Council of Arizona’s belief that these basic principles will assist this Committee in answering your questions regarding the Indian Trust Fund lawsuit.

First, the Department of Interior must comply with the spirit of consultation, including legitimate, timely, and good faith consultation with elected tribal leadership, not just the letter of consultation.

Second, new authorizations and appropriations are required for trust reform. Taking any funds from either the Trust Office or the Bureau of Indian Affairs is

unacceptable, as these appropriations are already at funding levels that fall far below the need.

Third, trust reform must include the creation of an independent oversight entity that would have responsibility for trust administration. And, Tribal leaders need to be present on this entity, as they have detailed knowledge of what works and what doesn't. Also needed are representatives with an understanding of the concept of "Trust Responsibility" as it relates to the Tribal/Federal historic relationship.

Fourth, the Department of Interior's trust responsibility must be clearly defined.

Fifth, trust reform must continue to support the role of Tribal self-determination and self-governance.

Sixth, funds must be distributed to the local level to ensure trust reform.

Seventh, any additional responsibilities related to trust reform must be accompanied by additional funds.

And the final principle is that an Undersecretary of Indian Affairs position must be included in the Department of Interior's organizational chart in order to ensure accountability within the Department of Interior.

In addition to these principles, the core concept of "trust" to Indian tribes must be incorporated into the concept of "trust" as used for banking and accounting purposes. These two concepts must be woven together, rather than separated, in order to address the problems of the trust accounting, whether such "trust" is for Individual Indian Money Account holders or for Indian Nations. Which brings me to my next comment, which is more of a concern. I hope that this Committee, through this hearing and the previous two hearings, and the rest of Congress, is not attempting to place Indian Nations against their own members, who may or may not be members of the class in the Trust Fund lawsuit. The Inter Tribal Council of Arizona is asking for Congress' commitment to adequately fund any proposal, whether it is a historical accounting, or a settlement, without taking from the Bureau of Indian Affairs' already underfunded budget.

In conclusion, there are certain actions the Congress can do in order to, at a minimum, move forward to a possible resolution to the Trust Fund lawsuit.

First, Congress can adequately fund the Department of Interior with newly authorized and appropriated funds for the court-imposed historical accounting.

Second, Congress can conduct hearings, similar to this hearing, with the primary parties involved in the Trust Fund lawsuit and pose to them the same question you have posed to the Indian Nations—"Can a process be developed between the Individual Indian Money Account holders and the Department of Interior to settle the matters related to the Indian Trust Fund lawsuit?"

Third, the Inter Tribal Council of Arizona supports your opposition, Congressman Hayworth, to the one-year delay of the court-imposed historical accounting.

Thank you for the opportunity to address this Committee. Good Afternoon.

[Whereupon, at 2:45 p.m. the Subcommittee was adjourned.]

